APPEAL NO. 000827

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 21, 2000. The hearing officer determined that the appellant's (claimant) impairment rating (IR) was 10% as certified by the designated doctor selected by the Texas Workers' Compensation Commission (Commission). In his appeal, the claimant asserts that the hearing officer erred in giving presumptive weight to the designated doctor's IR because it was not calculated in accordance with the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides). In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Reversed and remanded.

The parties stipulated that the claimant sustained a compensable injury on _____; that Dr. N is the designated doctor appointed by the Commission; and that the claimant reached maximum medical improvement (MMI) on August 28, 1999. In a Report of Medical Evaluation (TWCC-69) dated July 7, 1999, Dr. C, a doctor who examined the claimant at the request of the carrier, certified that he reached MMI on May 15, 1999, with an IR of two percent for loss of range of motion (ROM) in the cervical spine. In the narrative report accompanying his TWCC-69, Dr. C noted that the claimant was assigned a zero percent rating under Table 49 of the AMA Guides for a specific disorder of the cervical spine because "there is no objective clinical or medical finding of impairment resulting from the compensable injury." In addition, Dr. C assigned a zero percent for neurologic impairment because "there is not objective and measurable evidence of motor or sensory deficits."

The claimant apparently disputed Dr. C's certification and Dr. N was selected by the Commission to serve as the designated doctor. In a TWCC-69 dated August 28, 1999, Dr. N certified that the claimant reached MMI as of that date with a 10% IR all attributed to loss of cervical ROM. In the narrative report accompanying his TWCC-69, Dr. N noted that "[b]ased on neuromuscular examination, the examinee shows no sensory or motor deficits" and that "[u]pon review of the medical records and physical examination, the examinee shows no specific disorders for the cervical spine that would be ratable." Dr. N also noted that the claimant gave "sub-maximal effort" in his testing.

In a TWCC-69 dated October 8, 1999, Dr. F, the claimant's treating doctor, certified that the claimant reached MMI on October 7, 1999, with an IR of 18%. There is no narrative accompanying Dr. F's IR; thus, there is no indication of the components of his 18% IR.

The claimant introduced a letter from Dr. M expressing his disagreement with Dr. N's IR. Specifically, Dr. M opined that Dr. N should have assigned a four percent rating to the claimant under Table 49 for a specific disorder of the cervical spine and further asserted that Dr. N incorrectly calculated the claimant's ROM impairment. Dr. M concluded that Dr. N's IR would have been 16% if it were properly calculated, which was comprised of 13% for loss of cervical ROM and four percent for cervical diagnosis-related impairment under Table 49.

In his appeal, the claimant initially argues that the hearing officer erred in giving presumptive weight to the designated doctor's report because "a question exists as to whether [Dr. N's] rating included an evaluation of the Claimant's complete history for cervical injury." The claimant contends that Dr. N was not provided with all of his medical records and that, as such, he did not have the necessary information to determine the claimant's IR. In Texas Workers' Compensation Commission Appeal No. 991702, decided September 24, 1999, we noted that Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.6(j) (Rule 130.6(j)) does not require that a designated doctor review literally "all" records. Rather, we stated that in order to prevail on such a theory, it is incumbent upon the claimant to identify, with supporting medical evidence, what record was essential and not made available to the designated doctor. No such showing was made in this instance and, accordingly, under the guidance of Appeal No. 991702, we perceive no error in the hearing officer's having not forwarded the additional records to the designated doctor for his review to determine the effect, if any, of those records on the claimant's IR.

The claimant also asserts that Dr. N's certification is not entitled to presumptive weight because of the "deficiencies" identified in that rating by Dr. M. Dr. M contended that Dr. N should have assigned a four percent rating under Table 49 for a specific disorder of the cervical spine. In his narrative, Dr. N stated that based upon his review of the claimant's medical record and his examination, the claimant did not have any ratable specific disorder in his cervical spine. Dr. M's contrary opinion that such a rating should have been assigned represents a difference of medical opinion as to whether the claimant is or is not entitled to a rating for that component of a cervical spine IR. Dr. M's opinion does not rise to the level of the great weight of the other medical evidence contrary to Dr. N's report. By giving presumptive weight to the designated doctor's report under Sections 408.122(c) and 408.125(e), the legislature has established a procedure where the designated doctor's resolution of such a difference is to be accepted. Accordingly, the hearing officer did not err in determining that Dr. N's decision not to award a rating under Table 49 did not provide a basis for rejecting his certification.

Finally, we consider the assertion that Dr. N erred in awarding his ratings for cervical ROM under Tables 51, 52, and 53 of the AMA Guides. As an example, Dr. M noted that Dr. N assigned a two percent rating under Table 51 for cervical flexion based on the claimant's flexion measurement of 30E. Dr. M opined that three percent was the value that should have been assigned because the claimant's measured angle was 30E rather than 40E, which is the figure that corresponds to a two percent rating in Table 51. We have previously determined that the ROM charts for the spine do not provide for rounding.

Texas Workers' Compensation Commission Appeal No. 980894, decided June 17, 1998; Texas Workers' Compensation Commission Appeal No. 982038, decided October 1, 1998; Texas Workers' Compensation Commission Appeal No. 992223, decided November 15, 1999; Texas Workers' Compensation Commission Appeal No. 992482, decided December 16, 1999 (Unpublished); and Texas Workers' Compensation Commission Appeal No. 992694, decided January 18, 2000. As such, we agree that Dr. N improperly assigned the two percent rating for cervical flexion. In this instance, the claimant's cervical flexion measurement was 30E and under the guidance of the cases cited above, he was entitled to a three percent rating under Table 51 because he was not able to obtain the 40E measurement that corresponds to a two percent rating and as such, he has lost a larger degree of motion than was reflected in the flexion rating assigned by Dr. N. That is, it appears that Dr. N rounded the claimant's measured flexion angle of 30E to 40E and assigned the two percent rating that corresponds to a 40E flexion angle. Under our reading of the AMA Guides, the structure of the ROM charts for the spine does not provide for rounding up. Rather, they state that a given IR can be assigned only if, in his ROM testing, the patient is able to obtain the angle that corresponds to that rating in the chart. Accordingly, we reverse the determination that the claimant's IR is 10% and remand the case to the hearing officer. On remand, the hearing officer should send a letter to Dr. N advising him that we have interpreted the AMA Guides as not permitting rounding in the calculation of ROM impairment in the spine, give the above example of impermissible rounding, and request that he recalculate the IR he assigned to the claimant for loss of cervical ROM with that prohibition in mind. In addition, the hearing officer should ask Dr. N to provide a medical explanation for his decision to do so in the event that he determines that rounding is appropriate in this case.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Commission's Division of Hearings, pursuant to Section 410.202. *See* Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

Elaine M. Chaney
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Judy L. Stephens
Appeals Judge