

## APPEAL NO. 000972

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on April 5, 2000. The hearing officer determined that the great weight of the other medical evidence was contrary to the report of Dr. L which certified an impairment rating (IR) of 25% and that the appellant's (claimant) correct IR is 15% as certified by Dr. B, the claimant's treating doctor. The claimant appeals this determination, expressing her disagreement with it. The respondent (carrier) replies that the decision is correct, supported by sufficient evidence, and should be affirmed.

## DECISION

Affirmed.

The claimant compensably injured her lumbar spine on \_\_\_\_\_. On August 18, 1998, she underwent a laminectomy and fusion. The sole issue in this case is the claimant's IR. Dr. B completed a Report of Medical Evaluation (TWCC-69) on May 10, 1999, in which he assigned a 15% IR, consisting of 12% for a specific disorder, operated with residuals, and three percent for loss of lateral range of motion (ROM). He invalidated flexion and extension ROM. The carrier apparently timely disputed this certification and Dr. L was appointed designated doctor by the Texas Workers' Compensation Commission (Commission).

Dr. L completed a TWCC-69 on July 3, 1999, in which he assigned a 25% IR consisting of 10% for a specific disorder of the lumbar spine and 15% for loss of ROM (four percent lateral and 11% flexion and extension).<sup>1</sup> Dr. C reviewed Dr. L's TWCC-69 and testified at the CCH that the flexion and extension portions of Dr. L's report were invalid for two reasons: first, Dr. L did not do the flexion and extension testing in one complete series for each test, and, second, the straight leg raise (SLR) according to Dr. L's own figures otherwise invalidated the flexion and extension ROM. Dr. L twice responded to Dr. C's critique stating that Dr. C did not know the sequence Dr. L used to measure ROM and that Dr. C's opinion has "no support" in the AMA Guides.<sup>2</sup>

Section 408.124 provides that an award of impairment income benefits "shall be made on an [IR] determined using the" AMA Guides. Section 408.125(e) states that the report of a designated doctor selected by the Commission, as Dr. L was, is entitled to presumptive weight and the Commission is to base its determination of IR on that report "unless the great weight of the other medical evidence is to the contrary." Whether an IR is in accordance with the AMA Guides is to be determined by the hearing officer as part

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<sup>1</sup>We observe that under the combined values chart of the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides), these elements combine to yield a 24%, not a 25%, whole person IR. If the impairment were calculated at 10% for a specific disorder and four percent for loss of lateral ROM, the whole person IR would be 15%.

<sup>2</sup>Interestingly, Dr. L does not disclose how he sequenced his ROM testing.

of the "great weight" analysis. Texas Workers' Compensation Commission Appeal No. 992902, decided February 3, 2000; Texas Workers' Compensation Commission Appeal No. 951969, decided January 4, 1996. If the great weight of the other medical evidence is contrary to the report of the designated doctor, the Commission "shall adopt the [IR] of one of the other doctors." Section 408.125(e). See also Texas Workers' Compensation Commission Appeal No. 941511, decided December 22, 1994, for other options available to a hearing officer.

In this case, the hearing officer found that Dr. L's report did not comply with the AMA Guides for the two reasons identified by Dr. C. Having reviewed Dr. L's report in light of all the medical evidence, we agree that according to Dr. L's own figures, the SLR invalidated the flexion and extension ROM measurements. Specifically, the difference between the tightest SLR (33E) and the sum of the sacral ROM (11E), and true lumbar extension angle (zero degrees) was greater than 10E. In reaching this conclusion on this basis, we need not address Dr. C's other point about the proper sequencing of the tests. Thus, we find no merit in the claimant's argument on appeal that the figures used by Dr. L validated this portion of his IR.

The claimant also asserts on appeal that the hearing officer did not explain why he found the great weight of the other medical evidence contrary to Dr. L's report. See Texas Workers' Compensation Commission Appeal No. 961429, decided September 6, 1996. We disagree. The hearing officer stated in his discussion that Dr. C established that Dr. L did not properly apply the AMA Guides, including as a reason that Dr. L failed to validate flexion and extension based on the SLR. Having reached this conclusion, the hearing officer adopted Dr. B's report. The carrier did not appeal this resolution and we find no error in it.

For the foregoing reasons, we affirm the decision and order of the hearing officer.

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Alan C. Ernst  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Gary L. Kilgore  
Appeals Judge