

APPEAL NO. 001171

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 originally held on July 23, 1999. The hearing officer determined that the appellant's (claimant) impairment rating (IR) is 10% as certified by Dr. A, the Texas Workers' Compensation Commission (Commission)-selected designated doctor. The Appeals Panel, in Texas Workers' Compensation Commission Appeal No. 991913, decided October 15, 1999, remanded the case to the hearing officer for her to assure that the designated doctor is properly advised of the law related to the IR that he was to assign; for Dr. A to personally determine if an impairment for depression should be assigned, and, if so, what percent; and for the hearing officer to determine which report of Dr. A is entitled to presumptive weight, to determine whether the great weight of the other medical evidence is contrary to that report of Dr. A, and to award the claimant an IR. The hearing officer obtained a letter from Dr. A, provided a copy to the parties, and gave them the opportunity to comment on that letter of Dr. A. In her decision on remand, the hearing officer determined that the claimant's compensable injury does not include depression; that Dr. A's reports of January 28, 1998, and June 11, 1999, were rendered in compliance with the provisions of the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides) and are entitled to presumptive weight with the exception of the IR of 15% assigned for depression; that the great weight of the other medical evidence is not contrary to Dr. A's finding of maximum medical improvement and IR with the exception of the IR assigned for depression; and that the claimant's IR is 15%. The claimant appealed five findings of fact and the conclusion of law that her IR is 15%; contended that extent of injury was not an issue at the CCH, but rather that the respondent (carrier) disputed the methodology applied by the designated doctor in determining the permanency of the depression; urged that the 28% IR of Dr. A was rendered in compliance with the provisions of the AMA Guides and that the great weight of the other medical evidence is not contrary to that IR; and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision that her IR is 28%. The carrier responded; urged that the hearing officer correctly found that the 15% impairment for depression assigned by the designated doctor was not established as being permanent and was not based upon objective medical evidence that is independently confirmable by a doctor without reliance on the subjective symptoms of the claimant, correctly found that the great weight of the other medical evidence is contrary to the designated doctor's assignment of 15% impairment for depression, and correctly concluded that the claimant's compensable injury does not include depression; and requested that the decision of the hearing officer be affirmed.

DECISION

We reverse the decision of the hearing officer and render a decision that the claimant's IR is 28% as assigned by the designated doctor in an amended report.

The evidence in the record prior to the hearing officer seeking clarification from Dr. A is in Appeal No. 991913, *supra*. Briefly, Dr. A, in a Report of Medical Evaluation (TWCC-69) dated January 28, 1998, stated that the claimant had reached maximum medical improvement by operation of law with a 10% IR. In a letter dated June 25, 1998, a Commission benefit review officer advised the designated doctor that the claimant's compensable injury includes the left hand and depression; provided Dr. A seven medical reports from the Clinic, where she was treated for depression; and asked him to indicate any changes in the claimant's IR. Medical records dated January 13, 1998; February 10, 1998; and March 9, 1998, are among the records provided to Dr. A and include "major depression, recurrent" in the diagnostic impression. In a letter dated August 27, 1998, Dr. A stated that he assigned 15% impairment for "mild to moderate emotional disturbance under unusual stress" in accordance with Section 4.1a of the AMA Guides and five percent impairment for unilateral brachial impairment, and used the combined values chart of the AMA Guides to assign a 28% IR. At the request of the carrier, Dr. C examined medical records and questioned the IR assigned by Dr. A. Dr. C questioned the rating for the upper extremity and wanted to know the objective criteria that were used to determine that the claimant's depression was permanent and why Chapter 4 of the AMA Guides was used to determine the impairment for depression. In a letter dated October 22, 1998, Dr. A explained how he determined the impairment of the upper extremity, stated why he used Chapter 4 of the AMA Guides to determine the claimant's impairment for depression, and said that he considered the reports from the Clinic as well as his interviews with the claimant in determining the impairment for depression.

In a Decision and Order dated August 6, 1999, the hearing officer determined that Dr. A assigned a 10% IR on January 28, 1998; that he assigned a 28% IR on June 11, 1999; that the great weight of other medical evidence is contrary to the IR of 28%; that the great weight of other medical evidence is not contrary to the 10% IR; and that the claimant's IR is 10%. The Appeals Panel reversed that decision of the hearing officer and remanded to her as set forth earlier in this decision. The hearing officer sought clarification from Dr. A. In a letter dated March 9, 2000, Dr. A stated that he was now practicing medicine in another state; that he was not in position to reexamine the claimant; that he stood by his previous reports and the computations in them, particularly the matter of a rating for depression; and that it was based directly on the diagnosis made by the Clinic and by using the only percentages for depression set forth in the AMA Guides. The parties were provided the opportunity to comment on Dr. A's letter dated March 9, 2000. The carrier repeated the contentions made by Dr. C. It did not raise the issue of whether the claimant's depression is part of the compensable injury.

After the injury, the claimant moved to another state to live with her parents. She participated in the CCH by telephone. At the CCH, the hearing officer asked the parties if they would stipulate that "[o]n September 26, 1995, the claimant sustained a compensable injury to her left hand, cervical spine, left shoulder and also in the form of RSD [reflex sympathetic dystrophy]." The record does not indicate how the hearing officer arrived at that proposed stipulation. It is subject to more than one interpretation. The record contains five different Payment of Compensation or Notice of Refused/Disputed

Claim (TWCC-21) forms in which the carrier disputed the claimant's entitlement to some benefits and the compensability of some conditions. The TWCC-21s in the record do not indicate that the carrier contested the compensability of the claimant's depression. At the CCH, the carrier contended that Dr. A did not state the objective clinical or laboratory findings to establish the claimant's depression and the clinical or laboratory findings to establish that the depression is reasonably presumed to be present. While the extent of a claimant's injury must be known to determine the claimant's IR, the carrier did not dispute the compensability of the claimant's depression and the issue of whether the compensable injury included depression was not before the hearing officer. We reverse Finding of Fact No. 6 that the claimant's compensable injury does not include depression and render a decision that it does.

In Finding of Fact No. 8 the hearing officer found:

The designated doctor's reports of January 28, 1998 and June 11, 1999 were rendered in compliance with the provisions of the AMA Guides and are entitled to presumptive weight with the exception of the [IR] of 15% assigned for depression.

On numerous occasions, the Appeals Panel has held that only one report of a designated doctor is entitled to presumptive weight. In Appeal No. 991913, *supra*, the hearing officer was asked to determine which report of Dr. A is entitled to presumptive weight and to determine if the great weight of the other medical evidence is contrary to that report. She did not do so. The report of Dr. A dated January 28, 1998, indicates that the claimant's IR is 10% and does not include an impairment for all of the injury to the left upper extremity. In Appeal No. 991913, *supra*, we quoted from Texas Workers' Compensation Commission Appeal No. 950104, decided March 7, 1995, concerning objective and clinical or laboratory findings and from Texas Workers' Compensation Commission Appeal No. 951447, decided October 9, 1995, concerning Chapters 4 and 14 of the AMA Guides and impairment for depression. We reverse part of Finding of Fact No. 8 and render a Finding of Fact No. 8 that simply states that the report of Dr. A dated June 11, 1999, was rendered in compliance with the provisions of the AMA Guides and is entitled to presumptive weight.

In Appeal No. 991913, *supra*, the Appeals Panel cited Texas Workers' Compensation Commission Appeal No. 92522, decided November 9, 1992, and stated that a hearing officer who rejects a report of a designated doctor that is entitled to presumptive weight because the great weight of the other medical evidence is to the contrary must clearly detail the evidence relevant to his or her consideration, clearly state why the great weight of the other medical evidence is to the contrary, and further state why the contrary evidence outweighs the designated doctor's report. In the case before us, the hearing officer made some comments that concern whether the designated doctor rendered a report in compliance with the AMA Guides, but she did not set forth the information required in Appeal No. 92522, *supra*. In Finding of Fact No. 11, the hearing officer found:

11. The great weight of the other medical evidence is not contrary to [Dr. A's] finding of maximum medical improvement and [IR] with the exception of the [IR] assigned for depression.

We reverse part of Finding of Fact No. 11 by deleting “with the exception of the [IR] assigned for depression.” Considering Finding of Fact No. 8 that we rendered earlier in this decision, we render a Finding of Fact No. 11 that states “[t]he great weight of the other medical evidence is not contrary to the report of Dr. A dated June 11, 1999.” Based on those rendered findings of fact and other findings of fact of the hearing officer that were not reversed, we render a conclusion of law that the claimant’s IR is 28% as certified by Dr. A in his amended report dated June 11, 1999.

We reverse the decision of the hearing officer and render a decision that the claimant’s IR is 28%.

Tommy W. Lueders
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert E. Lang
Appeals Panel
Section Manager