

APPEAL NO. 001647

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 July 5, 2000. The hearing officer determined that the Texas Workers' Compensation Commission (Commission) properly selected Dr. X as designated doctor in this case in accordance with Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.6 (Rule 130.6) and that the appellant's (claimant) impairment rating (IR) is five percent as certified by Dr. X. The claimant appeals, contending that Dr. X should not have been appointed designated doctor and that the decision is otherwise contrary to the great weight and preponderance of the evidence. The respondent (carrier) replies that the decision is correct, supported by sufficient evidence, and should be affirmed.

DECISION

Affirmed in part and reversed and rendered in part.

The claimant sustained a compensable injury on _____. On June 20, 1995, Dr. N, presumably a treating doctor, completed a Report of Medical Evaluation (TWCC-69) in which he certified a 16% IR. No explanation by Dr. N of the components of this IR or how he arrived at it is contained in the record.¹

The report of a designated doctor is given presumptive weight and the Commission is to base its determination of IR on this report unless the great weight of the other medical evidence is to the contrary. Section 408.125(e). Dr. X completed a TWCC-69 on August 6, 1996, in which he certified a five percent IR for a specific disorder of the lumbar spine. In an attachment to this report, Dr. X explained that he selected the five percent because, in his opinion, the claimant had a disc protrusion at L5-S1 with "no frank nerve root compromise" and no herniation. He also found normal lateral flexion and lumbar flexion, but a loss of two percent of lumbar extension. Dr. X invalidated the lumbar extension because the "tightest straight leg raise exceeded the sum of sacral flexion and extension by more than ten degrees." See the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association, at page 91. A review of Dr. X's calculations reflect that the difference did not exceed 10E but was exactly 10E. Thus, he improperly invalidated lumbar extension.

We conclude that adding the two percent IR for lumbar extension to the five percent specific disorder IR is in the nature of a mathematical correction. See Texas Workers' Compensation Commission Appeal No. 000028, decided February 22, 2000. For this reason, we reverse the determination that the claimant's IR is five percent and render a decision that it is seven percent.

¹According to Dr. X, the IR of Dr. N consisted of seven percent for a specific disorder of the spine (herniation) and nine percent for loss of lumbar range of motion. No worksheets of Dr. N were in evidence.

The claimant also argued at the CCH and again on appeal that the Commission erred in finding that Dr. X was properly selected and appointed designated doctor on the grounds that his "opinion is suspect because he is frequently ised [sic] by the Carrier." No evidence was introduced to support this contention and we find no merit in it. See Rule 126.10(a)(4)(B).

For the foregoing reasons, we reverse the determination that the claimant's correct IR was five percent and render a decision that the correct IR was seven percent. We affirm the determination that Dr. X was properly appointed as designated doctor in this case.

Alan C. Ernst
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Robert W. Potts
Appeals Judge