

## APPEAL NO. 001689

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 June 1, 2000. The parties agreed that the appellant's (claimant) date of maximum medical improvement was March 1, 1999. The hearing officer determined that the claimant's impairment rating (IR) was 12%, as certified by the designated doctor in her first Report of Medical Evaluation (TWCC-69) dated April 29, 1999; that the compensable injury of \_\_\_\_\_, extended to include right knee chondromalacia; and that the respondent (carrier) did not have an obligation to dispute the extent of injury within 60 days of receiving written notice of the condition. The claimant appealed the IR determination only, contending legal and factual error. The carrier replied that this determination was correct, supported by sufficient evidence and should be affirmed. The unappealed resolutions of the remaining issues have become final. Section 410.169.

### DECISION

Reversed and rendered in part and reversed and remanded in part as to the appealed issue.

The claimant sustained a compensable right knee injury on \_\_\_\_\_. He has undergone four knee surgeries, in May 1997, April 1998, July 1998, and March 2000. Dr. A was selected designated doctor by the Texas Workers' Compensation Commission (Commission). On April 29, 1999, Dr. A completed a TWCC-69 in which she assigned an IR consisting of lower extremity ratings of seven percent for loss of right knee range of motion (ROM), 10% for a torn meniscus, and 15% for an anterior cruciate ligament (ACL) loss. This translated to a 12% whole person IR. We observe that Dr. A did not state in her report that she compared right knee ROM to the uninjured left knee ROM.

After the first surgery, the claimant's chondromalacia became evident. Apparently, Dr. A did not have the medical records relating to the chondromalacia at the time she completed her first TWCC-69. On July 23, 1999, the Commission wrote Dr. A asking, among other things, if she performed ROM testing, what instrument she used, whether the claimant was entitled to a rating for the chondromalacia, and, if in her opinion, her assigned IR remained the same. Dr. A responded on August 20, 1999, in relevant part that the claimant would be entitled to an additional rating "if a Radiological [sic] objective evidence is presented . . . ." Apparently at least one more benefit review conference was held thereafter and on January 12, 2000, the Commission again wrote Dr. A. In this second letter, Dr. A was asked under what part of Table 36 of the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides) she assigned a ROM rating. Dr. A answered that ROM was assigned under line item no. 2 (torn meniscus), which according to the AMA Guides allows a ROM additive; line item no. 5 (chondromalacia), which does not allow a ROM additive; and under line item no. 6 (ACL loss), which allows a ROM additive. Dr. A was then asked if ROM could be added under line item no. 5. She

answered "yes." This answer, at least in the context of only a line item no. 5 diagnosis, was incorrect. Texas Workers' Compensation Commission Appeal No. 970889, decided June 26, 1997; Texas Workers' Compensation Commission Appeal No. 982455, decided December 4, 1998 (Unpublished). She was next asked if the claimant had chondromalacia, to which she responded "yes," and if ROM could be added to a chondromalacia diagnosis, to which she again, incorrectly, answered "yes." On February 8, 2000, Dr. A completed a second TWCC-69 in which she assigned an 18% IR. The only difference between this TWCC-69 and the first one was that in the second one, Dr. A added a 15% lower extremity IR for chondromalacia.<sup>1</sup>

The critical issue presented for resolution was whether the original or the amended TWCC-69 of Dr. A was entitled to statutory presumptive weight. See Section 408.125(e). We have held that a designated doctor may amend a TWCC-69 for a proper reason if done within a reasonable amount of time. Texas Workers' Compensation Commission Appeal No. 92441, decided October 8, 1992. These are questions of fact for the hearing officer to determine. Texas Workers' Compensation Commission Appeal No. 000799, decided June 7, 2000.

The hearing officer found that Dr. A did not amend her report in a reasonable amount of time or for a proper reason. Finding of Fact No. 7. With regard to the 10 months that elapsed between the first and second report, the hearing officer commented that "the record does not show where Claimant's condition had improved, nor was he scheduled for surgery during that period." We do not believe that these reasons are dispositive on the question of reasonable time to amend, but go more to the question of proper reason. More importantly, there was uncontradicted evidence that the parties were in contact with each other and the Commission, which was in turn in contact with Dr. A on a regular basis up to the time Dr. A issued her second TWCC-69. There is nothing in the record from which we can conclude that the claimant's inaction contributed in a substantial way to the time that elapsed between the first and second reports. Under these circumstances, we conclude that the hearing officer's finding that Dr. A did not amend her report within a reasonable amount of time is against the great weight and preponderance of the evidence. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). We reverse that determination and render a decision that it was amended in a reasonable amount of time.

The hearing officer also found that Dr. A amended her report for an improper reason "since her amended findings included a rating for both loss of [ROM] and chondromalacia, contrary to the [AMA Guides]." Finding of Fact No. 7. While this was the final result of the amendment, the inquiry was made about a possible amendment in order for Dr. A to consider whether to assign a rating for chondromalacia, which is part of the compensable injury, but which had not been considered by Dr. A in her first TWCC-69. We have held

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<sup>1</sup>When the Combined Values Chart is used, the components of this IR yield a 40% (not a 44% as found by Dr. A) lower extremity IR which translates to a 16% whole body IR, not an 18% whole body IR as found by Dr. A.

that a proper reason to amend a TWCC-69 can be to ensure that the entire compensable injury is rated. Texas Workers' Compensation Commission Appeal No. 990667, decided May 13, 1999. In this case, it is not clear why Dr. A did not at the time of her first IR have the medical records diagnosing chondromalacia. Whatever the reason, it cannot be attributed to the claimant. Because we believe the objective of rating the entire compensable injury was a proper reason for amending the designated doctor's report, we reverse the finding that Dr. A did not have a proper reason for amending her report and render a decision that she did have a proper reason. Because we conclude that Dr. A amended her report for a proper reason and in a reasonable amount of time, there remains the question of whether the amended report complied with the AMA Guides.

In Texas Workers' Compensation Commission Appeal No. 000134, decided March 7, 2000, which was the decision on remand in Texas Workers' Compensation Commission Appeal No. 991702, decided September 24, 1999, we addressed the nettlesome question of whether under Table 36 of the AMA Guides, a doctor may assign a rating for multiple specific disorders of the knee and also a ROM additive for the knee, as in this case, when one or more of the specific disorders allows a ROM additive and one or more does not. In Appeal No. 000134, *supra*, we pointed out that Table 36 was ambiguous on this issue, but we expressly rejected "the abstract proposition . . . that a ROM additive is never appropriate" in these circumstances. In discussing pertinent Appeals Panel decisions, we stressed that in the situation of multiple specific disorders of the knee, some of which did and some of which did not allow a ROM additive, what is important is that the designated doctor fully account for any ROM loss. In the case we now consider, we question whether Dr. A found it clinically necessary to fully account for the loss of ROM by including a specific rating for it (seven percent) and also by assigning a rating for the chondromalacia (15%), which already has a ROM component.

For the foregoing reasons, we reverse the determinations of the hearing officer that Dr. A's first TWCC-69 was not properly amended and was entitled to presumptive weight and remand the issue of IR for further consideration and inquiry of Dr. A. Specifically, Dr. A should be asked to reexamine the claimant and to assign and explain an IR that fully accounts for the loss of ROM in the knee. Such loss of ROM can be accounted for by a separate ROM rating added to the diagnosis-based ratings for the ACL loss and/or torn meniscus, or by a chondromalacia rating, which already includes consideration of ROM, or by a combination of the two. On reexamination, Dr. A is required to compare the loss of ROM of the right knee to the ROM of the uninvolved left knee. See Chapter 3, p.1 of the AMA Guides. See *also* Texas Workers' Compensation Commission Appeal No. 972210, decided December 5, 1997.

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.

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Alan C. Ernst  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Judy L. Stephens  
Appeals Judge