

## APPEAL NO. 001882

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). In Texas Workers' Compensation Commission Appeal No. 000242, decided March 23, 2000, the Appeals Panel reversed and remanded the determinations of the hearing officer that the great weight of the other medical evidence was contrary to the 30% impairment rating (IR) assigned by Dr. W, the designated doctor, and that the appellant's (claimant) correct IR was 17% assigned by the treating doctor. The purpose of the remand was for express findings of the extent of the compensable injuries and reexamination by either Dr. W or a second designated doctor to determine the correct IR 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). The hearing officer, conducted a contested case hearing (CCH) on remand on May 30, 2000, and issued a decision on remand in which he found that the compensable injury extended to the right and left shoulder and the left elbow.<sup>1</sup> The extent of injury determination has not been appealed and has become final. Section 410.169. The hearing officer further declined to return the claimant to Dr. W for a reexamination in light of the findings of the extent of the compensable injuries because he again found that Dr. W "misapplied" the AMA Guides. Instead, he concluded that the claimant was entitled to the appointment of a second designated doctor. The claimant appeals this last determination arguing that, since Dr. W was not given the chance to reexamine the claimant in light of these proceedings, it was wrong to say he still misapplied the AMA Guides and to refuse to send the claimant back to Dr. W because the hearing officer disliked the "tone" or "style" of Dr. W's correspondence. Finally, the claimant challenges the impartiality of the hearing officer. The respondent (carrier) replies that the decision is correct, supported by sufficient evidence, and should be affirmed.

### DECISION

Affirmed.

Our decision in Appeal No. 000242, *supra*, contains an extensive recitation of the evidence on the various assigned IRs, which need not be repeated here. In particular, that decision addressed matters of significant concern about Dr. W's compliance with the AMA Guides. The Appeals Panel has in the past held that a second designated doctor may be appointed in those case in which the original designated doctor is unable or unwilling to comply with the AMA Guides. See Texas Workers' Compensation Commission Appeal No. 94966, decided September 6, 1993. Appointment of a second designated doctor is reviewed under an abuse of discretion standard. Texas Workers' Compensation Commission Appeal No. 960454, decided April 17, 1996. A hearing officer commits an abuse of discretion when a decision is made without reference to appropriate guiding rules or principles. Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986).

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<sup>1</sup>At the CCH on remand, the carrier accepted compensable neck, back, left shoulder, and right elbow injuries.

In the case before us, we provided the hearing officer with the options of going back to Dr. W for reexamination or appointing a second designated doctor. This choice was offered because we could not conclude that Dr. W correctly applied the AMA Guides in assigning a 30% IR. See Appeal No. 000242, *supra*. Comments were made at the CCH about the tone of Dr. W's response to criticism of his report by Dr. T, a carrier-selected review doctor. From this, the hearing officer apparently concluded that it would be pointless to return the claimant to Dr. W because Dr. W had already made up his mind about the claimant's IR and was unwilling to change his mind.<sup>2</sup> While the hearing officer was arguably reading too much into Dr. W's response to Dr. T's critique, we are unwilling to find that he abused his discretion in determining that a second designated doctor should be appointed in this case, that is, that he acted without any reference to the principle that a second designated doctor may be appointed if the first is unable or unwilling to comply with the AMA Guides.<sup>3</sup>

We stress that no determination of the claimant's correct IR has yet been made by the Commission in this case. The parties are encouraged to resolve this issue by agreement. However, if this cannot be agreed upon, then, if either party is not satisfied with the certification of IR that will be made by the second designated doctor, that party may again invoke the Commission's dispute resolution system by requesting a benefit review conference.

For the above reasons, and lacking statutory authority for further remands in this case, we affirm the decision and order of the hearing officer.

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Alan C. Ernst  
Appeals Judge

CONCUR:

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Tommy W. Lueders  
Appeals Judge

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Judy L. Stephens  
Appeals Judge

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<sup>2</sup>Contrary to the statement of the claimant on appeal, we do not find bias on the part of the hearing officer because he declined to return the claimant to Dr. W for reexamination.

<sup>3</sup>We also note that Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 126.6 (Rule 126.6), on which the claimant heavily relies, does not apply to designated doctors.