

## APPEAL NO. 002154

This appeal is brought pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on August 29, 2000. The only issue was what is the appellant's (claimant) impairment rating (IR). The claimant and the respondent (carrier) stipulated that the claimant sustained a compensable injury on \_\_\_\_\_; that she reached maximum medical improvement (MMI) on May 25, 1999; that on December 10, 1999, Dr. C, the claimant's treating doctor, assigned a 20% IR; and that on January 17, 2000, Dr. E, the Texas Workers' Compensation Commission (Commission)-selected designated doctor, assigned a 14% IR. The hearing officer determined that the claimant's IR is 14% as assigned by the designated doctor. The claimant appealed; stated that the hearing officer erred in each and every finding of fact and conclusion of law; contended that she proved that she has an IR of 20% as assigned by her treating doctor; and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision that her IR is 20%. The carrier responded, urged that the evidence is sufficient to support the decision of the hearing officer, and requested that it be affirmed.

### DECISION

We reverse and remand.

In a Report of Medical Evaluation (TWCC-69) dated December 10, 1999, Dr. C, a chiropractor, assigned a 20% IR. In an attachment to the TWCC-69, Dr. C states that he assigned 13% for loss of lumbar range of motion (ROM), assigned 8% for loss of ROM of the right hip, and used 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) to determine that the claimant's IR is 20%.

In a TWCC-69 dated January 17, 2000, Dr. E, a chiropractor, assigned a 14% IR. In an attachment to the TWCC-69, Dr. E wrote:

#### **Documentation review**

Surgical records were not forwarded from the insurance company. [Claimant's] treating doctor did send some documents which are listed below.

1. 12-10-1999 [Dr. C] TWCC-69 Report

[MMI] determined to be on 12-10-1999  
Gave a 20% WP Physical [IR]

Dr. E also stated that the claimant moved to California after she was injured; that she was treated by Dr. S and Dr. T in California; that Dr. T performed an anterior lumbar discectomy and fusion; that actual records were not available to disclose which exact level was fused and by what method; that the claimant returned to (city) and resumed treatment with Dr. C; and that the claimant reported that she continued to have right hip and right leg pain. Dr. C assigned 12% impairment under "Table 49. Impairments Due to Specific Disorders of the Spine, Section IV. Spinal stenosis, segmental instability, or spondylolisthesis, operated; Line B. Single level operation, with residual symptoms" of the AMA Guides; that he invalidated flexion and extension ROM tests; that he assigned 1% impairment for loss of right lateral flexion ROM; assigned 1% for loss of sensation and 1% for neurological impairment that resulted in a 2% impairment of the right lower extremity and 1% impairment of the whole body; and stated that the claimant's IR is 14%.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.6(h) (Rule 130.6(h)) provides in part as follows:

The treating doctor and insurance carrier are both responsible for sending to the designated doctor all the employee's medical records relating to the medical condition to be evaluated by the designated doctor that are in their possession without a signed release from the employee . . . . The medical records must be received by the designated doctor at least three days prior to the date of the appointment as specified in the commission order.

Rule 130.6(j) provides in part:

[T]he designated doctor shall conduct a physical evaluation and is responsible for the integrity of the evaluation process. This means the designated doctor must evaluate the complete clinical and non-clinical history of the medical condition(s), perform an examination of the employee, analyze the medical history with the clinical and laboratory findings and assess and certify an [IR] according to the AMA Guides.

The attachment to the TWCC-69 signed by Dr. E states that the only document available for his review was the December 10, 1999, report of Dr. C. With that limited documentation, Dr. E could not perform an evaluation as required by the provisions of Rule 130.6.

We reverse the decision of the hearing officer and remand for Dr. E to be provided with the medical records, for Dr. E to render a report in compliance with the provisions of Rule 130.6 and the AMA Guides, and for the hearing officer to render a decision that determines the claimant's IR. The Appeals Panel has previously stated that findings of fact should be made to determine whether the report of a designated doctor was made in compliance with the provisions of the AMA Guides, whether the

report is entitled to presumptive weight, and whether the great weight of the other medical evidence is contrary to the report that is entitled to presumptive weight.

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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Tommy W. Lueders  
Appeals Judge

CONCUR:

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Philip F. O'Neill  
Appeals Judge

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Robert W. Potts  
Appeals Judge