

APPEAL NO. 002365

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 September 14, 2000. With respect to the issues before him, the hearing officer determined that the respondent (claimant) reached maximum medical improvement (MMI) on February 23, 1999; that her impairment rating (IR) is 17% as certified by the designated doctor selected by the Texas Workers' Compensation Commission (Commission) in his amended report; and that the claimant did not have disability from February 24, 1999, to May 11, 2000. In its appeal the appellant (carrier) argues that the hearing officer erred in giving presumptive weight to the designated doctor's 17% IR because he did not properly apply the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides) in certifying a 17% IR. The appeals file does not contain a response to the carrier's appeal from the claimant. The claimant also did not appeal the determinations that she reached MMI on February 23, 1999, and that she did not have disability from February 24, 1999, to May 11, 2000, and those determinations have, therefore, become final under Section 410.169.

DECISION

Reversed and a new decision rendered that the claimant's IR is 11%.

Because only the issue of the claimant's IR is before us on appeal, our factual recitation will be limited to those facts most germane to that issue. The parties stipulated that the claimant sustained a compensable injury on _____; that Dr. C was selected by the Commission to serve as the designated doctor; and that on October 11, 1999, Dr. C certified that the claimant reached MMI on February 23, 1999, with an IR of 14%. The narrative report accompanying Dr. C's Report of Medical Evaluation (TWCC-69) demonstrates that the 14% IR is comprised of 2% for loss of cervical range of motion (ROM), 5% for a specific disorder of the lumbar spine under Table 49 of the AMA Guides, and 7% for loss of lumbar ROM. The breakdown of the 7% lumbar ROM was 5% for loss of lumbar flexion and 2% for loss of lumbar extension. On May 18, 2000, Dr. C reexamined the claimant for purposes of determining her IR for bilateral knee injuries. In a TWCC-69 dated May 18, 2000, Dr. C increased the claimant's IR from 14% to 17%. In his narrative report, Dr. C noted that he had assigned a 4% lower extremity rating for loss of ROM in the right knee and 4% lower extremity rating for loss of ROM in the left knee for a total lower extremity rating for both legs of 8%, which converted to a 3% whole body rating. Dr. C combined the 3% rating with the 14% rating he had previously assigned for a total IR of 17%.

The carrier had Dr. CC perform a peer review of the designated doctor's IR. In a report dated July 17, 2000, Dr. CC stated that Dr. C erred in two respects in calculating the 17% IR. Initially, Dr. CC stated that Dr. C should not have assigned a rating for loss of lumbar flexion and extension ROM because the claimant did not satisfy the straight leg raise (SLR) validity test. In addition, Dr. CC states that Dr. C erred by combining

impairment for the right and left lower extremity before converting the upper extremity impairment to a whole person rating. Dr. CC opined that if the lumbar ROM was invalidated, and the correct procedure was followed to combine the impairment for the right and left lower extremity, the claimant's IR would be 11%.

The hearing officer determined that the designated doctor's report was entitled to presumptive weight because the great weight of the other medical evidence was not contrary thereto. The hearing officer did not specifically address the carrier's argument that Dr. C did not properly apply the AMA Guides in calculating the 17% IR. The SLR validity test provides that if the tightest SLR exceeds the sum of sacral flexion and extension by more than 10E, lumbar flexion and extension ROM are invalid. Dr. C provided his ROM worksheet to the Commission with his report and a reference to the worksheet reveals that the claimant's tightest SLR was 48E and that sacral flexion ROM and sacral extension ROM were 20E and 10E, respectively; thus, the tightest SLR (48E) exceeds the sum of sacral flexion and extension (30E) by 18E. Section 408.124(b) provides that a claimant's IR must be calculated in accordance with the AMA Guides. Where, as here, the claimant's ROM measurements do not satisfy the SLR test, those measurements are invalid and the designated doctor erred in awarding a 7% IR for lumbar flexion and extension ROM in this case. See Texas Workers' Compensation Commission Appeal No. 992654, decided January 10, 2000; Texas Workers' Compensation Commission Appeal No. 990889, decided June 9, 1999. Thus, the claimant's lumbar IR is 5%, which combines with the 2% IR for loss of cervical ROM for a total spine rating of 7%.

Dr. CC also contends that the designated doctor erred in combining the ratings for the right and left lower extremities before he converted those figures to whole person rating. We agree that the AMA Guides require that before the ratings for the claimant's spine and her right and left lower extremity can be combined, they must be converted to whole person. The 4% lower extremity ratings for the right and left knees would each convert to 2% whole person ratings.

Given our determination that the designated doctor improperly included impairment for lumbar flexion and extension ROM, and that he improperly combined the right and left lower extremity ratings before he converted them to whole person, we reverse the hearing officer's determination that the claimant's IR is 17% and render a new decision that the claimant's IR is 11%. The 11% results from combining the 7% total impairment for the spine with 2% for the right lower extremity, which yields 9%. The 9% is then combined with the 2% for the left lower extremity, which yields 11%.

The hearing officer's determination that the claimant's IR is 17% is reversed and a new decision rendered that the claimant's IR is 11%.

Elaine M. Chaney
Appeals Judge

CONCUR:

Tommy W. Lueders
Appeals Judge

Judy L. Stephens
Appeals Judge