APPEAL NO. 002832

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 November 15, 2000. With regard to the only issue before him the hearing officer determined that the respondent's (claimant) impairment rating (IR) was 15% as assessed by the designated doctor excluding the inclusion of cognitive dysfunction as part of the claimant's compensable injury.

The appellant (self-insured) appealed, contending that the designated doctor erred in including a rating for cognitive dysfunction and that it was "improper for a hearing officer to pick and choose parts of the designated doctor's report" citing an Appeals Panel decision. The self-insured asserts that the evaluation of one of the other doctors (neither of whom had examined the claimant) must be adopted pursuant to Section 408.125(e). The self-insured requests that we reverse the hearing officer's decision and render a new decision that the claimant has a 3% IR as assessed by Dr. D. The appeal file does not contain a response from the claimant.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury to her right foot and both hands (in a fall) and that the claimant reached maximum medical improvement (MMI) on December 28, 1999.

The claimant was initially treated by a number of doctors, whose reports are not in evidence. The treating doctor has apparently died and the claimant moved out of state. In evidence is a Report of Medical Evaluation (TWCC-69) dated November 4, 1999, certifying MMI on July 28, 1999, and assessing a 3% IR from Dr. D. No narrative accompanies that form but from the worksheets, Dr. D apparently only considered the upper extremities. Although Dr. D marked that he was the treating doctor, the claimant testified that she was not examined by Dr. D and had never met or seen Dr. D. There is no evidence to the contrary.

Nonetheless, the claimant disputed Dr. D's assessment and Dr. W was appointed as the Texas Workers' Compensation Commission (Commission)-selected designated doctor. On a TWCC-69 and narrative dated December 28, 1999, Dr. W certified MMI and assessed a 19% IR. Dr. W's report is eight pages long, plus worksheets, and details exactly how he arrived at his rating. Basically, Dr. W assessed a 10% whole person impairment for the upper extremities, 6% whole person impairment for the lower extremities, and 5% for cognitive dysfunction 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 arrive at the 19% IR.

In a letter dated February 1, 2000, to the Commission, the self-insured disputes that certain conditions rated by Dr. W were part of the injury and asks that Dr. W be asked to only rate the compensable injury "consisting of bilateral hands [sic, the self-insured has also accepted the right foot]." The Commission sent the self-insured's letter to Dr. W and Dr. W replied that he lists everything but did not include the disputed conditions in his rating. The Commission again wrote Dr. W by letter dated June 16, 2000, stating:

> The Carrier has accepted the Claimant's hands, right foot, and RSD [reflex sympathetic dystrophy] (to hands/right foot) only, as being related to the 3-29-98 compensable injury. Please provide a report that consists solely on the compensable body parts for the date of injury of 3-29-98 consisting of Claimant's hands, right foot, and RSD (to hands/right foot) only.

Dr. W replied by letter dated June 22, 2000, stating that even without the "5% for depression" the IR "would still be 15%." Dr. W argues that the cognitive dysfunction should be part of the injury and that neuropsychological testing would prove the 5% impairment "will stand."

The hearing officer accepted the 10% impairment for the upper extremities, the 6% impairment for the lower extremities (combined to form the 15% IR), and excluded the 5% impairment for the cognitive dysfunction as a "ministerial function." The self-insured argues that the hearing officer cannot pick and choose parts of the designated doctor's report. As we held in Texas Workers' Compensation Commission Appeal No. 941732, decided January 31, 1995:

> [T]he impairment assigned by the designated doctor for the noncompensable wrist condition was separate and distinct from the impairment assigned for the compensable back and neck injuries, and the IR assigned by the designated doctor for the compensable back and neck injuries could be determined from his report without requesting additional input from the designated doctor.

In the instant case, the impairment assigned for the upper and lower extremities is clearly separate and distinct from the impairment assigned for the cognitive dysfunction. In Appeal No. 941732 we distinguished that situation from "pick and choose" cases stating:

> [W]e remanded decisions where the hearing officer decided to reject a portion of the IR assigned by a designated doctor for a claimant's compensable injury and accept as not against the great weight of the other medical evidence the remaining portion of the IR assigned for the compensable injury.

We have more recently followed the distinction made in Appeal No. 941732 in Texas Workers' Compensation Commission Appeal No. 972394, decided January 5, 1998 (Unpublished); Texas Workers' Compensation Commission Appeal No. 990486, decided April 22, 1999 (Unpublished); and Texas Workers' Compensation Commission Appeal No. 991459, decided August 25, 1999 (Unpublished).

As for the self-insured's argument that we are required by Section 408.125(e) and the self-insured's interpretation of case law to adopt Dr. D's IR (or the 0% IR assessed by a peer review doctor), we have held on many occasions that an evaluation or certification under the AMA Guides and the 1989 Act must include a physical examination and evaluation by the doctor. Texas Workers' Compensation Commission Appeal No. 982943, decided January 27, 1999; Texas Workers' Compensation Commission Appeal No. 961097, decided July 17, 1996; and more specifically Texas Workers' Compensation Commission Advisory 93-04, decided March 9, 1993. Neither Dr. D nor the peer review doctor ever examined the claimant and therefore those reports are not subject for adoption under Section 408.125(e).

Upon review of the record submitted, we find no reversible error and we will not disturb the hearing officer's determinations unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We do not so find and, consequently, the decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Kenneth A. Huchton
Appeals Judge

Robert W. Potts
Appeals Judge