

APPEAL NO. 002937

This case returns following our remand in Texas Workers' Compensation Commission Appeal No. 001689, decided September 6, 2000. A contested case hearing on remand was held on November 22, 2000. With respect to the single issue before her, the hearing officer determined that the respondent's (claimant) impairment rating (IR) is 16% as certified by the designated doctor selected by the Texas Workers' Compensation Commission (Commission) in her amended report. In its appeal, the appellant (carrier) argues that the hearing officer erred in giving presumptive weight to the designated doctor's amended IR because she 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 assessing the claimant's IR. In the alternative, the carrier contends that the great weight of the other medical evidence is contrary to the designated doctor's amended report. In his response to the carrier's appeal, the claimant urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in giving presumptive weight to the designated doctor's amended IR under Sections 408.122(c) and 408.125(e). The primary issue in this case is whether Dr. A, the designated doctor selected by the Commission, properly followed the AMA Guides in assigning a rating for loss of range of motion (ROM) in the claimant's knee in addition to assigning a specific disorder rating for a torn meniscus, anterior cruciate ligament loss, and chondromalacia. The resolution of that issue requires a consideration of Table 36 of the AMA Guides which is entitled "Impairment Ratings of the Lower Extremity For Other Disorders of the Knee." The case was remanded to have the designated doctor address the question of whether it was appropriate to include a rating for loss of ROM in the claimant's knee, in light of the fact that the claimant also received a specific disorder rating for chondromalacia, which is one of the conditions under Table 36 that does not provide for inclusion of a ROM rating in addition to the diagnosis-related rating. The consideration of that issue was to be done under the framework of Texas Workers' Compensation Commission Appeal No. 000134, decided March 7, 2000, where we rejected "the abstract proposition of the carrier that [a] ROM additive is never appropriate when there are multiple diagnoses some of which do and some of which do not permit a further consideration of ROM under Table 36." On remand, the hearing officer sent several letters to Dr. A in an attempt to obtain clarification of why Dr. A had provided a ROM rating in addition to providing a diagnosis-related rating for the meniscus, the anterior cruciate ligament, and the chondromalacia. While, Dr. A's responses were perhaps not as clear as they might have been, the hearing officer determined that when the responses were considered as a whole, Dr. A assigned a rating for ROM in addition to the diagnosis-related rating because she believed it was clinically appropriate to do so in order to fully account for the claimant's impairment from the compensable injury. That interpretation of Dr. A's letters is a reasonable interpretation of those responses. Thus, the

question becomes one of whether the great weight of the other medical evidence is contrary to Dr. A's February 8, 2000, report, which certified a 16% IR if the combined values table was used correctly. At best, the evidence contrary to the designated doctor's rating represents differences of medical opinion as to whether it is appropriate to include a rating for ROM or whether the chondromalacia was part of the compensable injury, an issue that was resolved against the carrier at the initial hearing and was not appealed. That evidence does not rise to the level of the great weight of medical evidence contrary to Dr. A's 16% IR. Accordingly, the hearing officer did not err in giving presumptive weight to that report in accordance with Sections 408.122(c) and 408.125(e) and in determining that the claimant's IR is 16%.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

CONCUR IN RESULT:

Susan M. Kelley
Appeals Judge