

## APPEAL NO. 010653

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). This case is back before us after our remand in Texas Workers' Compensation Commission Appeal No. 002221, decided November 9, 2000. We had remanded the case for the hearing officer to seek clarification from the designated doctor and obtain an impairment rating (IR) from him that rated the respondent's (claimant herein) entire injury and correctly applied the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides), or to appoint a second designated doctor if this did not prove to be possible. A contested case hearing (CCH) on remand was held on December 6, 2000, with the record closing on March 9, 2001. The hearing officer sought clarification from the designated doctor, but found that the designated doctor refused to rate the compensable injury. The hearing officer concluded that the date of maximum medical improvement and IR was in dispute and would have to be resolved by the appointment of a second designated doctor. The appellant (carrier herein) files a request for review arguing that the hearing officer should have adopted the IR of the designated doctor. The claimant responds that we should affirm the decision of the hearing officer.

### DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

The facts of this case prior to remand are set out in our decision in Appeal No. 002221, *supra*. On remand the hearing officer attempted to obtain clarification from the designated doctor on why he had not assessed any impairment for the claimant's herniated disc in light of the provisions of the AMA Guides providing permanent impairment for this condition. The designated doctor in his response stated that he would not change his IR (which was zero percent) and suggested that MRI scans are the least reliable form of testing and are often overread. The hearing officer found, as she had after the original CCH, that the designated doctor's IR was not valid because he failed to rate the claimant's compensable injury.

Section 408.124 provides that any determination of IR must be based upon the AMA Guides. The AMA Guides provide for assessment of permanent impairment for a herniated disc. We have previously held that a designated doctor must either rate a herniated disc or provide a reasonable explanation for failing to do so. Texas Workers' Compensation Commission Appeal No. 94471, decided June 7, 1994. In the present case, it is apparent that the hearing officer, who is the arbiter of the extent of injury, believed that the claimant's injury included a herniated disc and that the designated doctor's reason for not rating it was not reasonable. We find no reversible error in these determinations.

The decision and order of the hearing officer are affirmed.

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Gary L. Kilgore  
Appeals Judge

CONCUR:

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Philip F. O'Neill  
Appeals Judge

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Robert W. Potts  
Appeals Judge