

APPEAL NO. 011147
FILED JULY 11, 2001

This appeal after remand 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 October 25, 2000. In the first decision and order, the hearing officer determined that the compensable injury of the respondent (claimant) included injuries to her cervical and thoracic spine, right wrist, and bilateral shoulders, and also included a psychological disorder. The hearing officer also determined that claimant's impairment rating (IR) is 39%, in accordance with the report of the designated doctor, Dr. W. Appellant (carrier) appealed these determinations on sufficiency grounds. Claimant responded that the Appeals Panel should affirm the hearing officer's decision and order. The Appeals Panel affirmed the determinations that the compensable injury included injuries to the cervical and thoracic spine, and bilateral shoulders, and also included a psychological disorder. The Appeals Panel reversed a determination that the injury extended to the right wrist and concluded that it did not. Texas Workers' Compensation Commission Appeal No. 002684, decided January 4, 2001. The Appeals Panel reversed the hearing officer's determination regarding IR and maximum medical improvement (MMI) and remanded the case to the hearing officer to: (1) inform the designated doctor that the injury does not include the right wrist; (2) seek clarification from the designated doctor regarding the impairment for the psychological condition; and (3) reconsider the MMI determination. After seeking clarification from the designated doctor and sending the additional records to the parties for comment, the hearing officer signed a decision on remand. In that decision, the hearing officer determined that claimant reached MMI on September 30, 1999, with an IR of 44%. Carrier appealed the IR determination and also purported to appeal the determinations regarding extent of injury. The file did not contain a response from claimant.

DECISION

We affirm.

Carrier complains that the hearing officer determined that the injury extended to various body parts and included depression. We resolved these issues in our prior decision and we will not revisit these issues at this time. Appeal No. 002684. The remand in this case pertained only to MMI; the rating of the depression; the permanence of the depression; and the exclusion of the right wrist from the IR.

We have reviewed the complained-of determinations and conclude that the issues involved fact questions for the hearing officer. The hearing officer reviewed the record and decided what facts were established. We conclude that there was no reversible error shown with regard to the application of the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association or the applicable law. We conclude that the hearing officer's determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the hearing officer's decision and order.

Judy L. S. Barnes
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

DISSENTING OPINION:

I dissent. In my opinion, the 44% impairment rating (IR) assigned by Dr. W is not entitled to presumptive weight because Dr. W failed to follow the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides) in assigning a 20% rating for the claimant's "psychological disorder," the term used by the hearing officer in a finding and conclusion in the remand decision. The decision in Texas Workers' Compensation Commission Appeal No. 002684, decided January 4, 2001, remanded for the hearing officer to have Dr. W refer the claimant for evaluation by a psychiatrist and obtain the opinion of such psychiatrist "concerning impairment as it relates only to the depression." Dr. W referred the claimant for examination by Dr. M whom, we note, is a psychiatrist and not a "psychologist" as the hearing officer states in Finding of Fact No. 7. Dr. M's April 2, 2001, report to Dr. W states that the overall diagnosis is "major depressive disorder and extended anxiety." Notwithstanding that the claimant's compensable injury included her cervical and thoracic spine and bilateral shoulders, in addition to her psychological disorder, and did not include a head and/or brain injury, Dr. W's April 3, 2001, report to the hearing officer refers to the claimant's "emotional disturbance" and assigns the claimant a 20% rating under that portion of Chapter 4 (The Nervous System) of the AMA Guides pertaining to "Emotional Disturbances" at page 97. As stated on page 95, Chapter 4 "provides criteria for the evaluation of permanent impairment resulting from dysfunction of the brain, spinal cord, and cranial nerves, and those peripheral nerves not covered in Chapter 3." As stated on page 227, Chapter 14 (Mental and Behavioral Disorders) "discusses impairments due to mental disorders and touches upon behavioral impairments which might complicate any condition." Thus, in my view, Dr. W relied on the wrong chapter in the AMA Guides to arrive at his 20% rating for the claimant's psychological injury. The Appeals Panel in Texas Workers' Compensation Commission Appeal No. 951447, decided October 9, 1995, did not find that the designated doctor erred in considering the guidance in Chapter 4 in assigning an IR for the employee's post-traumatic

stress disorder under Chapter 14 and that, in so doing, the designated doctor had not transformed a Chapter 14 rating into a Chapter 4 rating. In the case we here consider, however, there is no indication whatsoever in the evidence that Dr. W considered the guidance in Chapter 14, the appropriate chapter given the claimant's injury, in arriving at the 20% rating. Rather, the evidence reflects that he relied exclusively on Chapter 4, and thus, in my opinion, failed to correctly follow the AMA Guides in arriving at his rating for the claimant's depression. I would reverse and render a new decision which invalidates so much of the claimant's 44% IR as includes the 20% rating.

Philip F. O'Neill
Appeals Judge