

APPEAL NO. 011778
FILED SEPTEMBER 12, 2001

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 July 12, 2001. With regard to the issues before him, the hearing officer determined that the respondent (claimant) reached maximum medical improvement (MMI) on July 25, 2000, with a 29% impairment rating (IR).

The appellant (carrier) appealed, arguing that the hearing officer's decision is contrary to the great weight of the evidence and that the hearing officer's decision should be reversed and a finding of a 9% IR, as assigned by the treating doctor, be rendered by the Appeals Panel. The claimant responds, urging affirmance of the hearing officer's determination.

DECISION

Reversed and remanded.

The parties stipulated to the following:

1. On October 1, 1998, the claimant sustained a compensable injury;
2. On July 25, 2000, Dr. M, the treating doctor certified that the claimant had reached MMI on July 25, 2000, with a 9% IR;
3. On November 3, 2000, Dr. B, the Texas Workers' Compensation Commission (Commission)-selected designated doctor, certified that the claimant reached MMI on July 25, 2000, with a 30% IR;
4. On March 29, 2001, Dr. B, the Commission-selected designated doctor, certified that the claimant reached MMI on July 25, 2000, with a 26% IR; and
5. The claimant's date of MMI is July 25, 2000.

The claimant testified that she was employed as an airline reservation agent for the employer. It was her testimony that she sustained an injury to her right and left wrists and elbows from repetitive motion activities in the course and scope of her employment. She stated that she had undergone surgeries to her left wrist and left elbow in December 1998, and undergone surgeries to her right wrist and right elbow in April 1999.

On July 25, 2000, Dr. M, the treating doctor, certified that the claimant had reached MMI with a 9% IR. Dr. M assigned a 5% whole body IR for the claimant's right upper extremity and 4% whole body IR for her left upper extremity, for a combined 9% whole body IR.

On November 3, 2000, Dr. B, the designated doctor, certified that the claimant reached MMI with a 30% IR. Dr. B assigned a 19% whole body IR for the right upper extremity, of which 9% was for right wrist abnormal motion and 13% whole body IR for the left upper extremity, which included a 5% reduction for non-preferred upper extremity impairment. The 19% IR for the right side and the 13% IR for the left side combined to a 30% whole body IR.

On January 19, 2001, Dr. Y, the carrier's peer review doctor, disagreed with Dr. B's medical report regarding the claimant's 30% IR. Dr. Y opined that there were misapplications and "administrative mistakes that were not in compliance with the [Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides)]." Dr. Y stated that Dr. B incorrectly applied the 5% reduction for non-preferred extremity "since the left wrist is the preferred extremity."

On March 29, 2001, Dr. B amended his medical report to change the claimant's IR from 30% to 26%. Dr. B opined that "after careful review of my report, range of motion [ROM] of the right wrist should not have been awarded due to the fact that [claimant] has not had surgery on the right and I awarded a neurological deficit . . . [t]herefore, the 9% upper extremity impairment for right wrist [ROM] deficit will be removed from the [IR]."

In view of the parties' stipulation to the MMI date as July 25, 2000, the sole issue before the hearing officer was the determination of the claimant's IR. Section 408.125(e) provides that the Commission shall base the IR on the designated doctor's report unless the great weight of the other medical evidence is to the contrary. The hearing officer did not base the claimant's IR on either one of the designated doctor's reports, and the hearing officer calculated the claimant's IR stating that the designated doctor was "under the impression Claimant is right-handed."

The hearing officer determined that the designated doctor's November 3, 2000, medical report regarding a 30% IR was calculated in error "by reducing Claimant's upper extremity [IR] for the wrong upper extremity, because the Claimant is left-handed, not right-handed." The hearing officer found that the designated doctor erred in his March 29, 2001, report when the designated doctor "removed 9% upper extremity impairment for right wrist [ROM] deficit 'due to the fact [claimant] has not had surgery on the right' when in fact she had." The hearing officer determined that the designated doctor's March 29, 2001, amended medical report regarding "the change from 30% to 26% whole body [IR], was not done for proper reason but rather in error."

We hold that the hearing officer erred in determining that the claimant has a 29% whole body IR. In the past, the Appeals Panel has approved a simple mathematical correction of a designated doctor's report to reflect the correct use of the AMA Guides. See, e.g., Texas Workers' Compensation Commission Appeal No. 950616, decided May 24, 1995. See also Texas Workers' Compensation Commission Appeal No. 950558, decided May 24, 1995. In this case, we consider whether the hearing officer accurately

characterized his amendment of Dr. B's report as a mathematical correction. We believe that the hearing officer substituted his own judgment and rating in adjusting the designated doctor's IR.

The hearing officer stated that the designated doctor had erred in his first report and recalculated that report stating:

[Dr. B] did the IR under the impression claimant is right-handed, and he therefore reduced the upper extremity (UE) impairment for her left UE by 5%, for non-preferred UE, pursuant to Chapter 3.1a (page 14) of the [AMA Guides]. This reduced 23% left UE to 22%. [Dr. B] should have instead reduced the IR for the right UE by 5%, $32\% - (32\% \times 5\%) = 30\%$, rounding to the nearer per cent. Correcting this error, claimant's IR would be left arm 23%, a whole person impairment of 14% (Table 3, [AMA Guides]), and right arm 30%, a whole person impairment of 18%. Combining the 14% and 18% using the Combined Values Chart results in an IR of 29%.

Further, the hearing officer found that the designated doctor had removed 9% upper extremity impairment for the right wrist ROM deficit "due to the fact [claimant] has not had surgery on the right" when in fact she had. We believe the hearing officer's calculation of the claimant's IR is beyond a simple mathematical correction and that he has exercised medical judgment in recalculating the claimant's IR.

The hearing officer's Decision and Order is reversed and remanded. We reverse the hearing officer's determination that the claimant's IR is 29%. We remand the case for the hearing officer to request that Dr. B, the designated doctor, reexamine the claimant and calculate the claimant's IR by taking into consideration the following:

1. The claimant had surgery to her right wrist in April 1999;
2. The claimant is left-handed; and
3. Comment on how he arrived at any sensory deficit impairment.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a new request for review not later than 15 days after the date on which the new decision is received from the Commission's Division of Hearings pursuant to Section 410.202 (amended June 17, 2001). See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

The true corporate name of the insurance carrier is **RELIANCE NATIONAL INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

**TIMOTHY J. McGUIRE
633 N. STATE HIGHWAY 161, SUITE 200
IRVING, TEXAS 75038.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Michael B. McShane
Appeals Judge