APPEAL NO. 011779
FILED SEPTEMBER 18, 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 9, 2001. The hearing officer determined that the respondent (claimant) reached maximum medical improvement (MMI) on December 12, 1999, with a 16% impairment rating (IR) as assessed by the designated doctor.

The appellant (carrier) appeals, contending that the designated doctor's report is "patently incorrect" and otherwise is contrary to the great weight of the other medical evidence. The file does not contain a response from the claimant.

DECISION

Reversed and remanded.

As indicated in the style of the case, the carrier is listed as ITT Hartford, however, the information submitted by the carrier found in the Hearing Officer's Exhibit No. 2 is that the "CARRIER'S TRUE CORPORATE NAME" is St. Paul Guardian Insurance Company. A review of the record has the following exchange:

> THE HEARING OFFICER: On December 12, 1997, the employer was insured through St. Paul Guardian Insurance Company. Claimant?
>
> [Claimant's Attorney]: Yes, sir.
>
> THE HEARING OFFICER: Carrier?
>
> [Carrier's Attorney]: No. Actually, that is not the correct carrier. It's Hartford Insurance Company. It's not St. Paul.
>
> THE HEARING OFFICER: It is Hartford?
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> [Carrier's Attorney]: It is Hartford.
>
> [Claimant's Attorney]: My correspondence shows it was ITT Specialty List Services. So that is Hartford?
>
> [Carrier's Attorney]: It is, yeah.
>
> [Claimant's Attorney]: Oh. Okay.

[Carrier's Attorney]: And I think actually the confusion is that [company] was where the claimant was on a temporary assignment, and their carrier is St. Paul.

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THE HEARING OFFICER: Okay. So then the employee is not – the Claimant is not an employee of [company]?

[Carrier's Attorney]: Yeah. More accurately reflected is through the temporary service that she was working for, which was [employer], yeah.

THE HEARING OFFICER: Okay. So on December 12, 1997, Claimant was the employee of employer, who had insurance through ITT Hartford?

[Claimant's Attorney]: That's correct.

[Carrier's Attorney]: Yes, Sir.

We remand the case back in order that the case can be correctly styled and that the Insurance Carrier Information sheet reflect the correct styling.

On the merits, the parties apparently agree that the claimant sustained a compensable injury on _____. Much of the medical evidence dealt with whether or not the claimant had a closed head injury, whether or not the claimant had seizures, and whether or not the claimant has a mental condition. None of those matters seem particularly relevant because the only two IRs in evidence rate only a cervical injury.

Dr. S, the carrier's required medical examination doctor, in a Report of Medical Evaluation (TWCC-69) and narrative both dated September 20, 1999, certified MMI on July 9, 1998, with a 1% IR. Dr. S recites the history, including cervical complaints, that Dr. L, apparently the claimant's treating doctor at the time, has prescribed therapy for the cervical spine, and that the claimant complains of "occasional neck pain and stiffness." The 1% IR was apparently assessed based on loss of the cervical range of motion (ROM). Dr. L agreed with that assessment on October 11, 1999.

How Dr. M, D.C., came to be appointed as the designated doctor is not evident, but the parties stipulated that Dr. M is the designated doctor "who assessed a 16% [IR] with a [MMI] of December 12, 1999." Dr. M's TWCC-69 and narrative are dated March 6, 2000. Dr. M's narrative indicates that he believes that the claimant "reached statutory MMI on December 12, 1999" and adopted that as his MMI date. Dr. M assessed the 16% IR as being a 4% impairment from Section II B, Table 49 of the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides) and 12% impairment for cervical loss of ROM. Dr. M's ROM figure, including a summary in the narrative and an apparently

computer-generated ROM exam, appear supportable. However, what appears to be a reproduction of Figure 83(a) of the AMA Guides contains negative T1 ROM figures for cervical flexion and negative right and left lateral flexion figures. The T1 ROM cervical flexion figures resulted in a 0% impairment but the other negative figures resulted in a 3% impairment. We do not understand how Dr. M arrived at negative T1 ROM figures.

Dr. M's MMI date is supportable based on his medical judgment, as is the 4% impairment from Section II B of Table 49 which allows that rating for cervical unoperated lesions with documented injury and a minimum of six months of medically documented pain, with recurrent muscle spasms. The various reports would support such a finding. However, because we are remanding the case for the insurance information, we also remand the case for Dr. M to either explain the negative figures on the Figure 83(a) form or do a reexamination of the claimant for ROM measurements.

The carrier seeks to challenge Dr. M's assessment through a "peer review" by its disability management company and a report signed by "[Ms. J] M.S., C.R.C. Senior Case Manager." Clearly Ms. J is not a doctor as defined in Section 401.011(17) nor does she appear to meet the qualifications of a health care practitioner as defined in Section 401.011(21). We note that Sections 408.122(c) and 408.125(e) give presumptive weight to the designated doctor's report "unless the great weight of the other medical evidence is to the contrary." The hearing officer did not err in commenting that Ms. J's peer review "does not rise to the level of the 'great weight of medical evidence'" and according it little, if any, weight.

We reverse the hearing officer's decision and remand the case for correction of the carrier insurance information and an explanation from Dr. M on how he arrived at negative ROM figures or for Dr. M to convert those figures to positive values or, if necessary, a reexamination of the claimant.

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 request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation 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.

Thomas A. Knapp
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Gary L. Kilgore
Appeals Judge