

APPEAL NO. 012511  
FILED DECEMBER 4, 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 (CCH) was held on September 25, 2001. The hearing officer resolved the disputed issues by determining that the certification of 0% impairment rating (IR) by Dr. L, the Texas Workers' Compensation Commission (Commission) designated doctor, may not be in accordance with the requirements of the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides); that even though Dr. L's assigned IR is not against the great weight of the other medical evidence, under the 1989 Act his reports are not presumed to be correct as to IR; and that the Commission adopts the 0% IR certification of Dr. P, an independent medical examination (IME) doctor. The appellant (claimant) appealed, asserting that the 24% IR assigned by her treating doctor, Dr. C, should be adopted, or, in the alternative, that the case be remanded and a new designated doctor appointed. The respondent (self-insured) responded, urging affirmance.

DECISION

Reversed and remanded.

The claimant sustained a compensable injury on \_\_\_\_\_, and reached maximum medical improvement on August 29, 1995. To date, the issue of the claimant's proper IR has not been resolved. On October 14, 1996, Dr. C certified that the claimant had a 48% IR. No Report of Medical Evaluation (TWCC-69) for this certification is in the record. On March 3, 1997, Dr. L examined the claimant, reviewed her medical records, and determined that she had a 0% IR due to the absence of trauma or nerve damage. On November 17, 1997, Dr. C recalculated the claimant's IR to be 30%. On April 3, 1998, in response to a Commission inquiry regarding whether or not the claimant needed to be reexamined, Dr. L stated the following:

I relied for my opinion, not so much on my ability to perform a specialized visual examination on [claimant] as I have neither the training or equipment to perform so, but on the previous reports by ophthalmologists outlined in my report of March 6, 1997. . . . In summary, regarding the need for reexamination, I probably would not be the best person to do it but consensus of the expert reports which I reviewed prior to my own report would indicate that any nonhysterical component, if any, cannot be connected by any known scientific mechanism to her head injury and therefore would not be appropriate to assign any impairment under the AMA Guides.

On March 1, 2000, Dr. P examined the claimant and certified a 0% IR, finding no organic reason for the claimant's visual disturbance. On February 7, 2001, Dr. C re-

certified the claimant with a 24% IR. On April 18, 2001, Dr. P reviewed Dr. C's latest certification and determined that the loss of vision in the claimant's right eye was from a preexisting condition, and that her complaints of diplopia were subjective and not organic in origin. Dr. P affirmed his 0% IR certification.

On appeal, the claimant requests that we remand the case back for another CCH with directions to appoint a second designated doctor. We decline to do so. Section 408.125(e) provides that the report of the designated doctor shall have presumptive weight unless the great weight of the other medical evidence is to the contrary. If the great weight of the other medical evidence is contrary to the IR contained in the report of the designated doctor chosen by the Commission, the Commission shall adopt the IR of one of the other doctors. This case is similar to those where the Commission-appointed designated doctor is unavailable or refuses to cooperate with the Commission. In this case, the hearing officer determined that the designated doctor may not have properly applied the AMA Guides, and the designated doctor acknowledged that he was not qualified to do more extensive testing. The hearing officer elected to adopt the IR of another doctor in compliance with Section 408.125(e). Nothing in our review of the record indicates that the hearing officer erred in failing to appoint a second designated doctor, especially in light of the fact that the parties were on notice that Dr. L was unable to further evaluate the claimant as early as April of 1998, three years prior to the CCH now under review.

While it is clear that the hearing officer applied Section 408.125(e) in adopting the IR of Dr. P, we are concerned that in making his determination as to the claimant's proper IR, the hearing officer did not consider the February 12, 2001, certification from Dr. C. In Finding of Fact No. 13, the hearing officer states:

On February 7, 2001, [Dr. C] wrote that Claimant had a best corrected vision of 20/2000 and 20/30, and that the loss of central vision in the right eye was 85% and in the left, 5%. [Dr. C] evaluated that as a 24% whole person impairment. **No TWCC-69 is in the administrative record certifying a 24% whole person [IR].** (Emphasis added.)

Upon review of the CCH file, we note that there is a TWCC-69 dated February 12, 2001, attached to Claimant's Exhibit No. 3 from Dr. C, certifying the claimant with a 24% IR. Because it is unclear from the record whether or not the hearing officer considered Dr. C's certification in determining the claimant's proper IR, we reverse his determination that the claimant's IR is 0%, and remand the case back to the hearing officer for further consideration of the complete record. No further hearing or additional evidence is necessary.

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 Commission's Division of Hearings, pursuant to Section 410.202 (amended June 17, 2001).

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**KS  
(ADDRESS)  
(CITY), TEXAS (ZIP CODE).**

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Philip F. O'Neill  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Robert W. Potts  
Appeals Judge