APPEAL NO. 020355
FILED APRIL 4, 2002

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 January 7, 2002. The hearing officer, rather than give presumptive weight to the report of the designated doctor, held instead that there were no "valid" reports from the designated doctor nor were there other reports which could be adopted. He further indicated in his decision that the most "appropriate option" would be to appoint another designated doctor. The appellant (carrier) appeals the hearing officer's determination that the respondent's (claimant) date of maximum medical improvement (MMI) was March 19, 2001, and that the claimant's impairment rating (IR) "cannot be determined." The carrier argues that a report rendered by a required medical examination (RME) doctor certifying MMI in December 1999 should have been adopted. The claimant responds, urging affirmance.

DECISION

Reversed and remanded.

The claimant injured his right knee on _____. He has not had surgery but has continued to have problems with the knee; some medical records indicated a meniscus tear and the possibility of reflex sympathetic dystrophy. As a result of a dispute over the MMI/IR report of an RME doctor[1], a designated doctor, Dr. M, was appointed. Although he issued an earlier report finding that the claimant had a 4% IR, this was later superceded by an August 3, 2000, report stating that the claimant had not reached MMI. Another CCH was held in January 2001 and the hearing officer held at that time that the "no MMI" report of Dr. M was entitled to presumptive weight and was not overcome by the great weight of contrary medical evidence. The Appeals Panel affirmed this decision in Texas Workers' Compensation Commission Appeal No. 010177, decided March 5, 2001.

Since the last CCH, the following reports concerning MMI and IR have been issued:

–The treating doctor certified MMI on March 20, 2001, with a 15% IR. The report in evidence did not include a narrative explaining how the IR was calculated.

–The designated doctor certified a 19% IR with MMI on March 20, 2001, Dr. M examined the claimant on April 18, 2001, to determine MMI and IR. IR consisted of 14% whole person (after converting range of motion (ROM) lower extremity IR to whole person), and to this was added another 5% from Table 36, Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides) for "Other Disorders of the Knee." The specific disorder from this chart was not identified. MMI

[1] It is a second report by the RME doctor, unchanged as to MMI date and IR, that the carrier urges should have been adopted by the hearing officer (assessing a 4% IR with an MMI date of December 30, 1999).

was certified on March 20, 2001.

–On August 20, 2001, Dr. M examined the claimant again and stated that the claimant's condition had deteriorated. ROM had gotten two degrees better, resulting in a 13% whole person IR. Table 36 again generated 5% of the IR, which Dr. M said was because of an MRI which demonstrated a tear of the posterior horn of the lateral meniscus and a partial menisectomy of the anterior horn of the medial meniscus. This report also showed measurements taken for the opposite side as well as the injured side. The 17% is the amount yielded by use of the Combined Values Chart in taking the converted ROM and then combining it with the figure of 5% yielded by Table 36. MMI was certified on March 20, 2001.

In each instance with Dr. M's reports, he said that he performed a reexamination on request from the Texas Workers' Compensation Commission (Commission). While the Commission is under no obligation, as part of "clarification," to send opposing doctors' opinions to the designated doctor for comment, the Commission apparently did so in this case and that led to the reexamination that yielded 17%. We note that the measurement charts show that the claimant's ROM IR resulted only from impaired flexion. Further, Dr. M noted normal sensory response, and no IR was thus awarded for this. On no occasion did Dr. M decline to serve as designated doctor nor was it shown that he failed to respond to the Commission.

The footnote to Table 36 states that ROM IR and the IR from that table should be combined using the Combined Values Chart. The primary doctor consulted by the carrier in this instance was Dr. O, who testified by telephone at the CCH. Dr. O complained that the designated doctor had prematurely converted the ROM measurement to whole person and then did not convert by use of the Combined Values Chart, Table 36 figures at all before combining. However, he also faulted Dr. M for first not measuring the noninjured opposite extremity in his 19% IR, and then not doing a "comparison" in the second report. He did not suggest what the result of the comparison should be. Dr. O further argued that the AMA Guides required testing in the supine and sitting positions and that this was not done.

Section 408.125(c) provides that if the designated doctor is chosen by the Commission, as in this case, the report of the designated doctor shall have presumptive weight, and the Commission shall base the IR on that report unless the great weight of the other medical evidence is to the contrary, and that, if the great weight of the medical evidence contradicts 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. Because we regard Dr. M's August 2001 17% IR as the significant report, because it was the most recent amendment, we shall focus our discussion on that report[2]. Likewise, reports in

[2] See Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.6(i) (Rule 130.6(i))(effective January 2, 2002); Texas Workers' Compensation Commission Appeal No. 013042-s, decided January 17, 2002.

evidence that were issued prior to the January 2002 hearing officer's decision, and that are based upon a certification of MMI that predates that CCH, cannot be considered because they were already held not to be a "great weight" of medical evidence contrary to Dr. M's earlier opinion that the claimant has not reached MMI. (We concur with the hearing officer's refusal on this basis to adopt the RME doctor's report.)

The Appeals Panel has stated several times that a hearing officer who finds that the great weight of the other medical evidence is contrary to the report of the designated doctor must identify the specific evidence on which this conclusion is based and clearly state why this evidence is contrary to the report of the designated doctor. *See* Texas Workers' Compensation Commission Appeal No. 991756, decided September 29, 1999; Texas Workers' Compensation Commission Appeal No. 961429, decided September 6, 1996; Texas Workers' Compensation Commission Appeal No. 941457, decided December 13, 1994. This was not done in this case, and the only specific problem with Dr. M's report which is identified in the discussion relates to correctable computational errors.

Finally, a difference in medical opinion does not constitute a "great weight" of medical evidence against the designated doctor's report. In this case, the hearing officer erred by determining that a "serious question" had been raised by Dr. O as to whether the examination by Dr. M complied with the AMA Guides and that the question alone caused the great weight of other medical evidence to be contrary to it. In our review of the record, it appears that Dr. O's opinions about testing in both the sitting and supine positions and his opinion that the report is invalid because no "comparison" was done with the uninjured knee constitute other medical opinions only. The AMA Guides show in their illustrations that testing is done in the supine position (described as the "neutral" position); we found no "requirement" of testing in two positions such that we can agree that Dr. M's testing did not conform to the AMA Guides. While the AMA Guides say that a comparison "should" be done with the opposite limb, it does not indicate that not doing so renders the resulting IR invalid, as suggested by Dr. O. Finally, while Dr. O stated that Dr. M's report did not make clear that the MRI diagnosis was the basis for using Table 36, we cannot agree, and think the linkage is made very clear.

The only point we agree is well- taken is that the AMA Guides require that the lower extremity IR be first derived (for the knee, by taking both ROM and any applicable diagnosis from Table 36, combined through the Combined Values Chart). Then, the result is converted to whole person using Table 42. We agree that conversion was prematurely decided by Dr. M after ROM IR for the lower right knee was computed. However, given that this is readily correctable, it was error for the hearing officer to invalidate the report and then opine that another designated doctor should be appointed. The designated doctor's August 2001 IR is, in our opinion, entitled to presumptive weight upon correction of the computation. The computation should be corrected by combining ROM and Table 36 IRs, then converting to a whole body IR by use of Table 42.

Although the Appeals Panel has recalculated IRs in other cases, we believe the better practice here, given the multistep process required, is for the designated doctor to

refigure his August 2001 results and resubmit those on a Report of Medical Evaluation (TWCC-69) which certifies the date of statutory MMI. Consequently, the hearing officer's task is simple on remand-- he is to forward the report to Dr. M for this recalculation to be made pursuant to the preceding paragraph, and then render a decision giving presumptive weight to that report. The need for any further "clarification" is long past. He should then forward the recalculation to the parties for response prior to issuing his decision.

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). *See* Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

The true corporate name of the insurance carrier is **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.

Susan M. Kelley
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Thomas A. Knapp
Appeals Judge