APPEAL NO. 021945
FILED SEPTEMBER 5, 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 was held on July 1, 2002. With respect to the single issue before him, the hearing officer determined that the appellant's (claimant) impairment rating (IR) is 14%, as certified by the designated doctor selected by the Texas Workers' Compensation Commission (Commission). The claimant appealed, arguing that the hearing officer erred in giving presumptive weight to the designated doctor's IR and asking that we render a decision that her IR is 17%. In its response, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

The parties stipulated that Dr. M is the designated doctor selected by the Commission. The claimant testified that she injured her back when she fell backwards while standing on a step-ladder on _____. She stated that she has undergone two fusion surgeries at L-5 in 1997 and in February 2000, and a partial laminectomy at T12 for the placement of a spinal cord stimulator in August 2000. A medical report by Dr. M, dated February 7, 2001, shows that he initially examined the claimant and "estimated" a 17% IR pending completion of additional treatment, specifically a tertiary rehabilitation program. A medical report by Dr. M, dated June 12, 2001, shows that he reexamined the claimant and assessed a 14% IR under 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) for two surgeries for a single level fusion. Dr. M noted in his narrative report that "[t]he partial laminectomy for the spinal cord stimulator is not a qualified surgical procedure." As such, he did not provide a rating for that surgery under Table 49, which is entitled Impairments Due to Specific Disorders of the Spine. In a letter dated August 6, 2001, the claimant's treating doctor, Dr. MI, disagreed with Dr. M's IR and opined that an additional 1% should be included to the claimant's IR for the August of 2000 surgery that consisted of a laminectomy at T12 and placement of a spinal cord stimulator. In a letter dated September 26, 2001, Dr. M responded to Dr. MI's concerns stating that the placement of spinal cord stimulators and medication pumps were not ratable surgeries under Table 49, noting that under the AMA Guides "the intent of 'operations' was specifically to deal with those structural issues associated with the injury."

On appeal, the claimant contends that the surgery to place the spinal cord stimulator at T12 should be included in her IR. Thus, she asks that we render a determination that her IR is 17%, as estimated by Dr. M in his initial report. We cannot agree that the hearing officer erred in determining that the claimant's IR is 14%, as certified by the designated doctor in his June 13, 2001, Report of Medical Evaluation (TWCC-69). We cannot agree with the assertion that Dr. M incorrectly applied that

AMA Guides by determining that the surgery to place the spinal cord stimulator was not a ratable surgery under Table 49. The relevant portion of Table 49 provides for a rating where there is a "surgically treated disc lesion." That is, as Dr. M stated, the AMA Guides provide for a rating under Table 49 where the surgery is to correct "structural issue " in the spine. In this instance, the surgery in question, a laminectomy incidental to the placement of a spinal cord stimulator at the T12 level, was not performed to treat a disc lesion or structural defect; thus, that surgery was not a ratable surgery under Table 49. *See also* Texas Workers' Compensation Appeal No. 990540, decided April 28, 1999 (where the Appeals Panel determined that four additional surgical procedures to drain infection and debride necrotic tissue from the claimant's spine following her development of a staph infection in the surgical site were not properly considered ratable surgeries under Table 49).

The claimant asks that we render the 17% rating that Dr. M estimated in his February 7, 2001, report. By its very terms, that rating was an estimate and was not intended by Dr. M to be the claimant's final IR. Indeed, Dr. M expressly stated in his report that it would have been inappropriate to assign a final IR to the claimant at that time. Accordingly, we find no merit in the assertion that Dr. M certified a 17% IR and, therefore, no such rating is available to become the claimant's IR.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

RUSSELL R. OLIVER, PRESIDENT
221 WEST 6TH STREET
AUSTIN, TEXAS 78701.

_____
Elaine M. Chaney
Appeals Judge

CONCUR:

_____
Susan M. Kelley
Appeals Judge

_____
Robert W. Potts
Appeals Judge