APPEAL NO. 022347
FILED NOVEMBER 6, 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 August 14, 2002. With respect to the issue before him, the hearing officer determined that the appellant's (claimant) correct impairment rating (IR) cannot be determined at this time and that a second designated doctor should be appointed in this case. In his appeal, the claimant argues that the hearing officer erred in determining that the claimant's IR cannot yet be determined and asks that we reverse the hearing officer's decision and render a new determination that the claimant's IR is 21% as certified by the designated doctor selected by the Texas Workers' Compensation Commission (Commission). The appeal file does not contain a response to the claimant's appeal from the respondent (carrier).

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable right lower extremity injury; that the claimant reached maximum medical improvement (MMI) on April 1, 2001; and that Dr. N, a chiropractor is the designated doctor selected by the Commission. The claimant's injury is identified in the medical records as a crush injury to the lateral aspect of the right foot, which has apparently necessitated several surgeries.

In a Report of Medical Evaluation (TWCC-69) dated June 14, 2001, Dr. N assigned an IR of 21%. In a letter dated July 6, 2001, Dr. O, who was hired by the carrier to conduct a peer review of the designated doctor's report, raised several questions about whether the designated doctor had properly applied the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides). The Commission sent Dr. O's report to the designated doctor to determine its effect on his IR. On August 22, 2001, Dr. N responded to Dr. O's critique of his IR. In so doing, Dr. N only addressed one of the points raised by Dr. O concerning whether he properly applied the AMA Guides in calculating his rating. In the balance of his response, Dr. N responded to what he perceived as personal criticism from Dr. O.

As the hearing officer noted, Dr. O raised some significant questions as to whether Dr. N properly applied the AMA Guides in assigning his 21% IR to the claimant. Unfortunately, Dr. N's response to Dr. O was insufficient to allay those concerns. As a result, the hearing officer determined that the designated doctor's report was not entitled to presumptive weight and we cannot agree that the hearing officer erred in making that determination. Once the hearing officer determined that the designated doctor's 21% IR could not be adopted, he had to determine if another IR in evidence could be adopted.

The hearing officer determined that there was no IR in evidence that could be adopted because they likewise did not fully comply with the AMA Guides. After reviewing the record, we find no merit in the assertion that the hearing officer erred in so determining. Accordingly, the only remaining option was to appoint a second designated doctor to determine the claimant's IR. As noted above, the parties stipulated that the claimant reached MMI on April 1, 2001. Thus, every effort should be made to expedite the appointment of a second designated doctor in order to avoid, as much as possible, further delay in resolution of the IR issue.

The hearing officer's decision and order are affirmed.

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

STEVE ROPER
1616 SOUTH CHESTNUT STREET
LUFKIN, TEXAS 75901.

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Elaine M. Chaney
Appeals Judge

CONCUR:

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Robert W. Potts
Appeals Judge

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Margaret L. Turner
Appeals Judge