

APPEAL NO. 022400  
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 June 3, 2002, with the record closing on September 10, 2002. On the sole issue, the hearing officer determined that the appellant (claimant)'s impairment rating (IR) is 11% as certified by the designated doctor appointed by the Texas Workers' Compensation Commission (Commission), in his most recent clarification. The claimant appeals this determination, asserting that he is entitled to a higher IR because the designated doctor incorrectly invalidated his lumbar flexion and extension measurements. The respondent (carrier) urges affirmance of the hearing officer's determination and, in the alternative, requests adoption of the designated doctor's previous IR certification.

DECISION

Reversed and rendered.

It is undisputed that the claimant sustained a compensable injury on \_\_\_\_\_, to his lumbar spine. The claimant underwent spinal surgery for his condition on January 17, 2000. Despite previous maximum medical improvement (MMI) and IR certifications, the parties stipulated that the claimant reached MMI on May 15, 2000. Pursuant to a request for clarification from the Commission, the designated doctor reexamined the claimant following surgery and certified a 13% IR, comprised of 2% for loss of lateral flexion in the lumbar spine and 11% 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). The designated doctor invalidated the claimant's forward flexion and extension based upon the straight leg raise (SLR) test. At the conclusion of the hearing below, the claimant argued that further testing of range of motion (ROM) was needed in accordance with the AMA Guides, given the invalidation of forward flexion and extension measurements. The hearing officer agreed, over the carrier's objection, and ordered that the claimant be reexamined. The designated doctor reexamined the claimant on June 19, 2002, and certified an 11% IR based solely upon a rating for a specific disorder under Table 49 of the AMA Guides. The designated doctor again invalidated the claimant's forward flexion and extension based upon the SLR test, while the claimant's lateral flexion was now shown to be within normal limits. The claimant was also examined by his treating doctor following surgery and certified with a 22% IR, comprised of 12% for loss of ROM and 11% under Table 49 of the AMA Guides.

The claimant contends that the hearing officer erred in determining that his IR is 11%, because the designated doctor incorrectly invalidated his forward flexion and extension measurements based upon the SLR test. Under the AMA Guides, lumbar flexion and extension measurements are invalid when the SLR measurement on the tightest side exceeds the total sacral (hip) motion by more than 10 degrees. See Texas

Workers' Compensation Commission Appeal No. 010761-S, decided May 23, 2001. Based upon the values provided in the designated doctor's final certification, we conclude that the claimant's lumbar flexion and extension are not invalid and the claimant is entitled to a 7% whole person rating under Table 56 of the AMA Guides, regarding loss of ROM of the lumbosacral region. The rating for loss of ROM, when combined with the rating under Table 49 of the AMA Guides, would provide the claimant with a 17% IR.

In its response, the carrier contends that the hearing officer erred in ordering that the claimant be reexamined and asserts that the designated doctor's 13% IR certification is the valid rating. The carrier cites as the basis of its assertion our decision in Texas Workers' Compensation Commission Appeal No. 972064, decided November 24, 1997, where we held that the AMA Guides do not require retesting when the claimant met the consistency requirements of the AMA Guides but failed to meet the validity requirements of the SLR test. To be clear, our decision in Appeal No. 972064, does not preclude a hearing officer from requesting clarification of a designated doctor's report when ROM is invalidated under these circumstances. See *also* Texas Workers' Compensation Commission Appeal No. 950248, decided April 5, 1995. Indeed, the AMA Guides provide that if the SLR exceeds total sacral (hip) motion by more than 10 degrees, the test is invalid and should be repeated. AMA Guides at p. 90. Accordingly, we cannot conclude that the hearing officer abused his discretion, in this case, by requesting that the claimant be re-examined by the designated doctor. Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986).

Pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.6(i) Rule 130.6(i), the designated doctor's response to the Commission's request for clarification is entitled to presumptive weight as it is part of his opinion. See *also* Texas Workers' Compensation Commission Appeal No. 013042-s, decided January 17, 2002. Based upon the measurements provided in the designated doctor's report, the claimant is entitled to an IR of 17%, as discussed above. Accordingly, we reverse the hearing officer's decision and render a new decision that the claimant's IR is 17%.

The decision and order of the hearing officer are affirmed.

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

**CT CORPORATION SYSTEMS  
350 NORTH ST. PAUL, SUITE 2900  
DALLAS, TEXAS 75201.**

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Gary L. Kilgore  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Margaret L. Turner  
Appeals Judge