

APPEAL NO. 030549
FILED APRIL 7, 2003

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 January 31, 2003. With respect to the single issue before him, the hearing officer determined that the great weight of the other medical evidence is contrary to the report of the designated doctor selected by the Texas Workers' Compensation Commission (Commission); thus, he further determined that the claimant's impairment rating (IR) is 15% as certified by her treating doctor. In its appeal, the appellant (carrier) argues that the hearing officer erred in determining that the great weight of the other medical evidence is contrary to the report of the designated doctor and asks that we render a determination that the claimant's IR is 5% as certified by the designated doctor. In her response to the carrier's appeal, the claimant urges affirmance.

DECISION

Reversed and rendered.

The parties stipulated that the claimant sustained a compensable injury to the right shoulder and trapezius area and to the cervical spine with a date of injury of D_____. In addition, the parties stipulated that the claimant reached maximum medical improvement on October 29, 2001, that Dr. K is the claimant's treating doctor, and that Dr. J is the designated doctor selected by the Commission.

In its appeal, the carrier argues that the hearing officer erred in not giving presumptive weight to the designated doctor's 5% IR. The difference in the ratings of the treating doctor and the designated doctor is attributable to the fact that the designated doctor placed the claimant in DRE Category II and assigned her a 5% IR from Table 73 of the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000) (AMA Guides), while the treating doctor placed the claimant in DRE Category III for radiculopathy and assigned a 15% IR from Table 73. In the narrative report accompanying his Report of Medical Evaluation (TWCC-69), the designated doctor noted based upon his examination of the claimant there is "no subjective or objective evidence of radiculopathy." In his medical records and his testimony at the hearing, the claimant's treating doctor acknowledged that the claimant's EMG/NCV testing was normal; however, he nonetheless maintained that the claimant had cervical radiculopathy. The treating doctor explained that the claimant had consistent complaints of radiating pain along a dermatomal distribution, loss of relevant reflexes, and muscle atrophy and that those factors together with his examination supported his diagnosis of radiculopathy. On August 26, 2002, the Commission sent a letter of clarification to the designated doctor asking him to "fully explain his position" that the claimant did not have radiculopathy. In his response, the designated doctor stated that his examination did not reveal motor or sensory deficits; that there was "no

measurable or observable atrophy”; and that the claimant’s “deep tendon reflexes were equal and active.” He concluded that there was “no radiculopathy” and did not change his IR. The hearing officer determined that the great weight of the other medical evidence was contrary to the designated doctor’s IR because the evidence from the claimant’s treating doctor and several other doctors established that the claimant had radiculopathy. We cannot agree that the evidence contrary to the designated doctor’s opinion rises to the level of the great weight of the other medical evidence. Rather, this is a case where there is a genuine difference of medical opinion between the designated doctor and the treating doctor as to whether or not the claimant has radiculopathy and, thus, whether she is properly rated under DRE Category II or Category III. We have long held that by giving presumptive weight to the designated doctor, the 1989 Act provides a mechanism for accepting the designated doctor’s resolution of such differences. Texas Workers’ Compensation Commission Appeal No. 001659, decided August 25, 2000; Texas Workers’ Compensation Commission Appeal No. 001526, decided August 23, 2000. Accordingly, the hearing officer erred in not giving presumptive weight to the designated doctor’s IR in this instance.

The hearing officer’s determination that the claimant’s IR is 15% is reversed and a new decision rendered that the claimant’s IR is 5%, as certified by the designated doctor.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** 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.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Panel
Manager/Judge

Roy L. Warren
Appeals Judge