

APPEAL NO. 030622
FILED APRIL 30, 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 9, 2003, with the record closing on February 13, 2003. On the sole issue, the hearing officer determined that the respondent's (claimant) impairment rating (IR) is 47%, as certified by the designated doctor appointed by the Texas Workers' Compensation Commission (Commission). The appellant (carrier) appeals, asserting that the designated doctor's IR certification is contrary to the great weight of other medical evidence. The claimant did not file a response.

DECISION

Reversed and remanded.

The claimant sustained a compensable injury to his lumbar spine on _____. The compensable injury was later determined to extend to and include depression. The parties stipulated that the claimant reached maximum medical improvement on February 25, 2001. The parties also stipulated that the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides) are applicable in this case.

On September 21, 2000, the carrier's required medical examination (RME) doctor, Dr. P, assigned the claimant a 13% IR, comprised of 5% for loss of range of motion (ROM) in the lumbar spine and 8% under Table 49 Section (III)(A) of the AMA Guides. On November 29, 2001, the Commission-appointed designated doctor certified the claimant with a 47% IR, comprised of 4% for loss of ROM in the lumbar spine, 8% under Table 49 Section (III)(A), and 40% for depression pursuant to p. 233 of the AMA Guides, Class III for "moderate impairment as compatible with some but not all useful function...includ[ing] activities of daily living, social functioning, concentration, and adaptation." With regard to the psychological rating, the designated doctor further wrote,

[The claimant] has a diagnosis of post-traumatic disorder and moderate depression and has a history of being on anti-depressant medication. He did undergo psychotherapy sessions by [Dr. W] psychiatrist. These records were reviewed. He has a lot of problems with his depression secondary to his job incident. Presently, he is on anti-depressant medication so that he can be acceptable in social functions.

He does not appear to be significantly impaired, but again he has to be on medication. The patient also developed a narcotic dependence to painkillers given to him for the back and knee pain. The patient did

complete a rehab [sic] program. He did also develop problems with insomnia related to his depression and post-traumatic stress disorder. He has been treated with sleeping pills. Due to the significance of his depression and history of medication, as well as, the post-traumatic stress disorder and insomnia and the history of narcotic dependence to painkillers, I consider the patient to at Class III, a 40 % whole person with moderate impairment as compatible with some but not all useful function.

On July 11, 2002, the claimant was examined by a second carrier RME doctor, Dr. S, who assigned an 11% IR under the AMA Guides, 4th edition, which included a 3% rating for depression. Dr. S testified at the hearing that the claimant's IR should be 9% under the 3rd edition of the AMA Guides, comprised of 4% loss of lumbar ROM and 5% under Table 49 Section (II)(B). Dr. S also opined that the claimant's depression is not a permanent disorder and should not be rated.

Following the hearing below, the hearing officer sent a letter of clarification requesting the designated doctor to "explain how you arrived at a 40% IR using Table 1, Class III of Chapter 14 of the AMA Guides. It is my understanding that there are 4 areas of function which need to be considered in arriving at an IR for Mental and Behavioral Disorders. Please explain how you arrived at the 40 % IR and how that IR complies with the AMA Guides." The designated doctor responded, "In re-reviewing the claimant's medical records, the claimant had been diagnosed with moderate depression and post-traumatic disorder by the psychologist and psychiatrist he had been evaluated by. The claimant underwent psychotherapy session with [Dr. W]. Upon my exam on [October 24, 2001], the claimant was still taking Zoloft for depression, so that he could be acceptable in social functions. In my opinion, he did not seem to be significantly impaired in regards to a depressive disorder. However, the claimant was on medication to help control the depression. Basically, his impairment for mental and behavioral disorders was based off the psychologists and psychiatrists reports." These reports are not incorporated into the designated doctor's report or otherwise a part of the evidentiary record.

The carrier asserts that the hearing officer erred in giving presumptive weight to the designated doctor's report because the claimant's depression is not a permanent condition and, therefore, not ratable under the AMA Guides. We have recognized that Section 401.011(23) and the AMA Guides require that depression be permanent to be rated. See Texas Workers' Compensation Commission Appeal No. 000093, decided February 29, 2000; Texas Workers' Compensation Commission Appeal No. 982551, decided December 16, 1998; and Texas Workers' Compensation Commission Appeal No. 94435, decided May 27, 1994. The designated doctor's reports indicate that the claimant underwent psychotherapy but, nonetheless, continues to require medication to help control his depression. The hearing officer could infer from these reports that the claimant's depression was assessed as a permanent condition. We view Dr. S's opinion that the claimant's depression is not permanent as a difference in medical opinion which does not rise to the level of the great weight of medical evidence contrary to the designated doctor's report.

The carrier also argues that the designated doctor's psychological rating is arbitrary and does not explain the basis for such rating. We recognize that Chapter 14 of the AMA Guides allows considerable latitude in rating mental and behavioral disorders. Notwithstanding, the doctor assigning an impairment, including a designated doctor, must comply with Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.1(c)(3) (Rule 130.1(c)(3)), which provides, in part:

(c) Assignment of Impairment Rating.

* * * *

(3) Assignment of an impairment rating for the current compensable injury must be based on the employee's medical record and the certifying examination. The doctor assigning the impairment rating shall:

(A) identify objective clinical or laboratory findings of permanent impairment for the current compensable injury;

(B) document specific laboratory or clinical findings of an impairment;

(C) analyze specific clinical and laboratory findings of an impairment;

(D) compare the results of the analysis with the impairment criteria and provide the following:

(i) A description and explanation of specific clinical findings related to each impairment, including zero percent (0%) impairment ratings; and

(ii) A description of how the findings relate to and compare with the criteria described in the applicable chapter of the AMA Guides. The doctor's inability to obtain required measurements must be explained.

In Texas Workers' Compensation Commission Appeal No. 961215, decided August 7, 1996, we reversed and remanded for further description of the basis and methodology used under the AMA Guides to compute an IR related to a psychiatric disorder, when the designated doctor's report contained only brief conclusory statements regarding the percentage of IR and furnished no description of the basis for calculating the impairment, the specific records reviewed, and any objective testing done or considered. See also Texas Workers' Compensation Commission Appeal No. 030338, decided March 27, 2003. We believe that a similar action is appropriate in this case. Accordingly, we reverse and remand the hearing officer's IR determination. The

hearing officer should, again, instruct the designated doctor to explain the basis of his psychological rating in accordance with Rule 130.1(c)(3) and our prior decisions. If the designated doctor is unable or unwilling to rate the claimant pursuant to these instructions a second designated doctor should be appointed.

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 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. 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.**

Edward Vilano
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Chris Cowan
Appeals Judge