

APPEAL NO. 031097  
FILED JUNE 5, 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 April 8, 2003. The hearing officer determined that the appellant's (claimant) impairment rating (IR) is 10% as certified by the Texas Workers' Compensation Commission-selected designated doctor. The claimant appealed, asserting that the designated doctor's certification was overcome by the great weight of the other medical evidence and that his IR should be 20% as assessed by the treating surgeon. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

The parties agreed that the claimant sustained a compensable low back injury on \_\_\_\_\_, and that he had spinal surgery on July 12, 2001. The parties stipulated that the claimant reached maximum medical improvement on April 23, 2002, and that the appropriate medical guide was 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).

The treating doctor assessed a 16% IR, but in addition to assessing the claimant with a rating under DRE Category II (specifically ruling out DRE Category III) he added various impairments for leg and hip weakness. Dr. L, the treating surgeon, agreed with the treating doctor, but rated the claimant with a 20% IR from DRE Category IV, although there is no roentgenogram evidence of loss of motion segment integrity. See page 3/102, Table 70, page 3/108, and Table 72, page 3/110 of the AMA Guides. *Also see Texas Workers' Compensation Commission Appeal No. 022509-s, decided November 21, 2002; and Texas Workers' Compensation Commission Appeal No. 022808, decided December 30, 2002.*

Dr. K was appointed as the designated doctor. In his first report dated June 24, 2002, Dr. K assessed a 20% IR based on a 10% impairment from DRE Category III in addition to impairment due to loss of range of motion. The parties agreed that this was incorrect. In a second report (incorrectly also dated June 24, 2002), Dr. K assessed a 9% IR but this report is internally inconsistent due to "transcription" or typographical errors. The parties requested clarification and in response to the request for clarification, Dr. K said he "would allow a 10% whole person impairment." (Emphasis in the original.) How he arrived at that rating is unclear.

There was conflicting evidence as to whether the claimant had radiculopathy. The claimant would have a 5% IR if he was in DRE Category II without radiculopathy.

However, if there is evidence of radiculopathy the appropriate rating would be DRE Category III which would result in a 10% IR. The hearing officer commented:

The [c]arrier argued that looking at all the communications as a whole from [Dr. K], it is apparent he placed the [c]laimant in the DRE model category III and this is how he arrived to the [10% IR]. As such, the [c]arrier argued the designated doctor should be afforded presumptive weight and [c]laimant's [IR] should be found to be [10% IR] as all other [IR's] issued were not proper.

The hearing officer then determined that the "designated doctor's amended finding of a [10% IR] is afforded presumptive weight" which was not contrary to the great weight of the other medical evidence.

The claimant argues that he is entitled to a 20% IR because he has "evidence of radiculopathy." We conclude that the hearing officer adopted the carrier's argument that the claimant does have radiculopathy and should be rated under DRE Category III. As noted previously, use of DRE Category IV is inappropriate in the absence of evidence of loss of motion segment integrity. We will uphold the hearing officer's judgment if it can be sustained on any reasonable basis supported by the evidence. Daylin, Inc. v. Juarez, 766 S.W.2d 347 (Tex. App.-El Paso 1989, writ denied).

Accordingly, the hearing officer's decision and order are affirmed.

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

**CORPORATION SERVICE COMPANY  
800 BRAZOS  
AUSTIN, TEXAS 78701.**

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Robert W. Potts  
Appeals Judge