

APPEAL NO. 031133  
FILED JUNE 12, 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 22, 2003. The hearing officer resolved the issue before him by determining that the appellant (claimant herein) had an impairment rating (IR) of 10%. The claimant appeals, arguing that the Appeals Panel should render a 15% IR based upon the report of the designated doctor selected by the Texas Workers' Compensation Commission (Commission) or remand the case to the hearing officer to seek further clarification from the designated doctor. The respondent (self-insured herein) replies that the 15% IR of the designated doctor is contrary to the protocols 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) and that, as clarification from the designated doctor has previously been sought, seeking further clarification would be unfruitful. The self-insured argues that the hearing officer did not err in adopting the 10% IR of the carrier required medical examination (RME) doctor which is consistent with the AMA Guides.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

On \_\_\_\_\_, the claimant suffered a low back injury when she fell from a concrete ramp at work. The claimant failed to respond to conservative treatment and underwent multiple spinal surgeries. On May 20, 2002, Dr. R, the designated doctor selected by the Commission examined the claimant. In a Report of Medical Evaluation (TWCC-69), Dr. R certified the claimant was at maximum medical improvement (MMI) with a 15% IR.

The self-insured sought a peer review of Dr. R's IR report. In a report dated June 6, 2002, Dr. W, the self-insured's peer review doctor, stated that Dr. R did not properly apply the AMA Guides in arriving at his 15% IR. Dr. W specifically states that the AMA Guides do not provide for a doctor to interpolate between the impairment values for two of the categories of Diagnosis-Related Estimates (DRE) found in Table 72 of the AMA Guides. Dr. R in assessing IR stated that he determined the claimant's IR by interpolating between 10% IR for a DRE Category III and the 20% for DRE Category IV. Dr. W stated that Dr. R in his report admitted that the claimant did not meet all of the criteria set out for DRE Category IV listed in Table 70, and that applying Tables 70 and 71, the claimant was at DRE Category III, which under Table 72 resulted in a 10% IR.

The Commission sent Dr. W's peer review report to Dr. R and sought clarification from him. In report dated August 22, 2002, Dr. R stated that he was permitted to interpolate under Chapter 2.2 of the AMA Guides and that it remained his opinion that

the claimant's IR was 15%. Dr. W stated in a report dated September 13, 2002, that Chapter 2.2 of the AMA Guides did not apply to DRE categories because with the DRE categories either a patient meets the criteria of a category or does not. Dr. W argued that the claimant met the criteria for DRE Category III, but not for DRE Category IV.

Dr. K the self-insured's RME doctor, examined the claimant and in a report dated November 15, 2002, he essentially agrees with Dr. W. Dr. K certified on a TWCC-69 dated November 15, 2002, that the claimant attained MMI on that date with a 10% IR.

The Commission sought further clarification from Dr. R. In a letter of December 5, 2002, Dr. R reiterated his position that he was permitted to interpolate pursuant to Chapter 2.2 of the AMA Guides. Dr. R stated that he still stood by his 15% IR.

The hearing officer found that Dr. R's IR was unsupported by the AMA Guides and thus invalid. The hearing officer found that the IR assigned by Dr. K was in accordance with the AMA Guides and therefore was valid. The hearing officer concluded that the claimant's IR was 10%.

The claimant argues that the hearing officer should have adopted Dr. R's 15% IR, or, in the alternative, should have sought further clarification from Dr. R. The report of the designated doctor selected by the Commission is entitled to presumptive weight on the issue of IR. Section 408.125(e)<sup>1</sup>. However, an IR must be determined using the AMA Guides. Section 408.124.

In the present case the critical question before us is whether Chapter 2.2 of the AMA Guides permit the designated doctor to interpolate between two of the DRE categories described in Table 70. Chapter 2.2 states in relevant part as follows:

### **Interpolating, Measuring, and Rounding Off**

In general, an impairment value that falls between those appearing in a table or figure of the *Guides* may be adjusted or interpolated to be proportional to the interval of the table or figure involved, unless the book gives other directions.

Unless generally accepted standards exist, as with many laboratory tests, two measurements made by the same examiner and involving a patient or a patient's functions may be expected to lie within 10% of each other.

Measurements should be consistent between two trained observers; if they have been made by one observer on separate occasions, they also should be consistent. Repeating measurements may increase their credibility.

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<sup>1</sup> Section 408.125(e) which applies to a claim for workers' compensation benefits for a compensable injury that occurred prior to June 17, 2001.

A final estimated whole-person impairment percent, whether it is based on the evaluation of one organ system or several organ systems, may be rounded to the nearer of the two nearest values ending in 0 or 5.

We had previously discussed Chapter 2.2 in our decision in Texas Workers' Compensation Commission Appeal No. 022504-s, decided November 12, 2002. In that case we held that the rounding provisions of this section did not apply to the values given in Figure 29 on page 3/8 of the AMA Guides because there were other directions in that section of the AMA Guides. We believe a somewhat analogous situation exists here.

Table 70 sets out certain qualitative criteria that must be met to place an examinee into each of the DRE categories. Unless the qualitative criteria are met for a DRE category, an examinee cannot be placed in that DRE category. Table 71 provides some additional criteria to assist the examiner in placing an examinee into the proper DRE category when it is unclear whether or not the examinee meets the qualitative criteria listed in Table 70. However, if an examinee clearly does not meet the qualitative criteria set out for a DRE category in Table 70, the examiner may not place the examinee in that DRE category. In the present case, it was undisputed that the claimant did not meet all the criteria set out for DRE Category IV. Dr. R recognized that the claimant did not have loss of motion segment integrity. Absent meeting the criteria for Category IV, the examiner could not place the claimant in DRE Category IV or use the impairment value for DRE Category IV found in Table 72 to rate the claimant's impairment. See Texas Workers Compensation Commission Appeal No. 022509-s, decided November 21, 2002.

Actually the provisions in Chapter 2.2 for interpolating, measuring, and rounding off which are quoted above appear to apply primarily to situations where there are quantitative measurements that may differ from examination to examination and/or from examiner to examiner, and not to situations where qualitative criteria are being judged. While the provisions in the last paragraph of Chapter 2.2 quoted above could theoretically apply to allow rounding off of the final whole person IR that was reached by applying qualitative criteria, it would appear to have no practical application to the impairment values found in Table 72. This is because these whole person impairments are already set out in multiples of 5 and/or 10. Thus any final whole person IR that comes solely from Table 72 could not be rounded to the nearest value ending 5 or 0 as it would already end in 5 or 0.

In this case we do not find error in the hearing officer's rejecting Dr. R's IR as not being valid under the protocols of the AMA Guides. Absent a valid IR from the designated doctor, the hearing officer was authorized under Section 408.125(e)<sup>2</sup> to adopt the IR of another doctor. While the hearing officer could have sought further clarification from Dr. R, we do not find it was error for him to do so in the case, as clarification had twice before been sought from Dr. R.

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<sup>2</sup> Again we refer to the Section 408.125(e) provision applicable to injuries occurring prior to June 17, 2001.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**SUPERINTENDENT  
(ADDRESS)  
(CITY), TEXAS (ZIP CODE).**

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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