

APPEAL NO. 031418
FILED JULY 24, 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 (CCH) was held on April 24, 2003. The hearing officer resolved the disputed issue by deciding that the respondent's (claimant) impairment rating (IR) is 19% as certified by the designated doctor chosen by the Texas Workers' Compensation Commission (Commission). The appellant (carrier) appealed. No response was received from the claimant.

DECISION

Reversed and remanded.

It is undisputed that the claimant sustained a compensable low back injury on _____ . The carrier's required medical examination (RME) doctor examined the claimant on June 30, 2000, and in a Report of Medical Evaluation (TWCC-69) certified that the claimant reached maximum medical improvement (MMI) on June 30, 2000, with a 5% IR, which was assessed using the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides 3rd ed.). Subsequently, in December 2000, the claimant underwent lumbar spine surgery at L4-5.

In a TWCC-69 dated August 27, 2001, the claimant's treating doctor certified that the claimant reached MMI on August 23, 2001, with a 19% IR, which was assessed using the AMA Guides 3rd ed. The treating doctor assigned the claimant 10% impairment for a specific disorder of the lumbar spine under Table 49, Part (II)(E); 8% impairment for loss of lumbar flexion and extension range of motion (ROM); and 3% impairment for impairment of the left leg due to nerve root impairment under Table 45. The treating doctor combined the impairments under the Combined Values Chart (CVC) to arrive at the 19% IR.

In a TWCC-69 dated November 7, 2001, the designated doctor certified that the claimant reached MMI on August 23, 2001, with a 19% IR, which was assessed using the AMA Guides 3rd ed. The designated doctor assigned the claimant 10% impairment for a specific disorder of the lumbar spine under Table 49, Part (II)(E), and 10% impairment for loss of lumbar ROM (lumbar flexion 4%, lumbar extension 3%, lumbar right lateral flexion 1%, and lumbar left lateral flexion 2%). The 10% impairment for a specific disorder of the lumbar spine was combined with the 10% impairment for loss of lumbar ROM using the CVC of the AMA Guides 3rd ed. to arrive at the 19% IR.

The carrier's RME doctor reexamined the claimant and in a TWCC-69 dated June 28, 2002, certified that the claimant reached MMI on August 23, 2001, with a 10% IR, which was assessed using the AMA Guides 3rd ed. The RME doctor assigned the

claimant 10% impairment for a specific disorder of the lumbar spine under Table 49, Part (II)(E).

A carrier peer review doctor wrote that the designated doctor needed to provide the ROM worksheet. The designated doctor provided the ROM worksheet and did not change the IR. The carrier's peer review doctor reviewed the designated doctor's ROM worksheet and concluded that the lumbar ROM did not meet the straight leg raising (SLR) validity criteria and that the 7% impairment the designated doctor assigned for loss of lumbar flexion and extension ROM was inappropriate. The carrier's peer review doctor agreed with the 10% IR assigned by the carrier's RME doctor.

The parties stipulated that the claimant reached MMI on August 23, 2001. It is undisputed that the AMA Guides 3rd ed. is the appropriate version of the AMA Guides to use in this case to assess the claimant's IR. See Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.1(c)(B)(ii) (Rule 130.1(c)(B)(ii)). With regard to the IR issue, the carrier appeals the hearing officer's findings of fact that the findings of the designated doctor are a valid certification that the claimant has a 19% IR, and that the great weight of the other medical evidence is not contrary to the findings of the designated doctor. The carrier also appeals the hearing officer's conclusion of law that the claimant has a 19% IR. The carrier contends on appeal, as it did at the CCH, that the designated doctor failed to invalidate lumbar ROM based on the SLR test.

For a claim for workers' compensation benefits based on a compensable injury that occurs before June 17, 2001, Section 408.125(e) provides that if the designated doctor is chosen by the Commission, the report of the designated doctor shall have presumptive weight, and the Commission shall base the IR on that report unless the great weight of the other medical evidence is to the contrary, and that if the great weight of the medical evidence contradicts the IR contained in the report of the designated doctor chosen by the Commission, the Commission shall adopt the IR of one of the other doctors.

The SLR validity test for lumbar ROM is set out on page 89 of the AMA Guides 3rd ed. as follows: Tightest SLR – (hip flexion + hip extension) is less than or equal to 10 degrees. Texas Workers' Compensation Commission Appeal No. 94056, decided February 24, 1995, explained that under the SLR validity test, lumbar spine measurements are valid if the sum of hip flexion and extension is within 10 degrees of the tightest SLR angle, and that the measurements are invalid if those two measurements are not within 10 degrees of each other. In subsequent decisions, the Appeals Panel held that the SLR test invalidates only flexion and extension ROM and does not invalidate lateral flexion ROM. See Texas Workers' Compensation Commission Appeal No. 962642, decided February 13, 1997, and Appeals Panel decisions cited therein. In Texas Workers' Compensation Commission Appeal No. 010761-s, decided May 23, 2001, the Appeals Panel set out the contents of Commission Question/Resolution Log (QRL) 01-13 regarding the SLR validity test. Paragraph (e) of that QRL provides:

Once consistency is attained for SLR and flexion and extension, identify the maximum true flexion angle and maximum true extension angle. Then add the sacral ROM angle that corresponds to the maximum flexion angle to the sacral ROM angle that corresponds to the maximum extension angle and compare those values to the maximum SLR measurement on the tightest side. If the SLR exceeds total sacral (hip) motion by more than 10 degrees, the test is invalid and should be repeated. Consult Abnormal Motion section of Table 56 to determine impairment of the whole person.

In the instant case, the designated doctor's lumbar ROM worksheet (Figure 83c) shows that that the maximum true flexion angle is 32 degrees, that the maximum true extension angle is 15 degrees, that the sacral ROM angle that corresponds to the maximum flexion angle is 3 degrees, that the sacral ROM angle that corresponds to the maximum extension angle is 9 degrees, and that the maximum SLR measurement on the tightest side is 41 degrees. Thus, subtracting total sacral (hip) motion of 12 degrees (3 degrees plus 9 degrees) from the maximum SLR on the tightest side of 41 degrees results in a difference of 29 degrees, which means that the SLR exceeded total sacral (hip) motion by more than 10 degrees. Since the maximum SLR on the tightest side was not within 10 degrees of the sum of sacral (hip) flexion and extension, the flexion and extension measurements are invalid under the SLR validity test and the designated doctor should not have assigned 4% impairment for lumbar flexion and 3% impairment for lumbar extension (as previously noted, the SLR test does not invalidate lateral flexion). Consequently, we must agree with the carrier's contention that the designated doctor improperly calculated the claimant's IR because the designated doctor's lumbar ROM worksheet shows that the claimant did not meet the SLR validity test. Thus, the hearing officer's finding that the findings of the designated doctor are a valid certification that the claimant has a 19% IR is incorrect.

We reverse the hearing officer's decision that the claimant's IR is 19% and we remand the case to the hearing officer for the hearing officer to provide the designated doctor with a copy of QRL 01-13 regarding the SLR validity test and for the hearing officer to request clarification from the designated doctor on the claimant's IR, including whether the designated doctor believes that ROM retesting is indicated under the circumstances presented. In addition, on remand the hearing officer should make findings of fact and conclusions of law with regard to the disputed issue of the claimant's IR.

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, as amended effective June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of time in which a request for appeal or a response must be filed.

The true corporate name of the insurance carrier is **THE CONNECTICUT INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

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

Robert W. Potts
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Veronica Lopez-Ruberto
Appeals Judge