

APPEAL NO. 031423
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 was held on December 9, 2002. The hearing officer determined that: (1) the compensable injury of _____, did not extend to and include severe depression; and (2) the respondent's (claimant) impairment rating (IR) was eight percent as certified by the designated doctor appointed by the Texas Workers' Compensation Commission (Commission). In Texas Workers' Compensation Commission Appeal No. 030056, decided February 12, 2003, we reversed and rendered a decision that the claimant's compensable injury did include severe depression and remanded the hearing officer's IR determination for further consideration. No further hearings were held in this matter. On remand, the hearing officer determined that the claimant has a 19% IR as certified by the Commission-appointed designated doctor. The appellant (carrier) appeals, requesting reconsideration of our decision in Appeal No. 030056 with regard to depression and urging adoption of the designated doctor's initial IR. The claimant did not file a response.

DECISION

Affirmed.

EXTENT OF INJURY

As stated above, the carrier requests reconsideration of our decision that the claimant's compensable injury extends to include severe depression, asserting that the Appeals Panel improperly "substituted its view of the facts for that of the Hearing Officer." However, in Appeal No. 030056, we determined that the hearing officer applied an incorrect legal standard in reaching his extent-of-injury determination. In view of the applicable law and the evidence presented, we cannot affirm the hearing officer's original determination that the compensable injury did not extend to and include severe depression.

IMPAIRMENT RATING

Prior to the remand in this case, the designated doctor certified the claimant with an 8% IR under the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (Third Edition AMA Guides). The designated doctor stated:

I did not feel that the examinee demonstrated any significant psychological impairment which was the result of the compensable injury on _____. Therefore, no impairment rating was given for psychological impairment.

On remand, the hearing officer requested “clarification regarding the impairment rating, *if any*, for the claimant’s depression.” The designated doctor recommended that the claimant be examined by Dr. B, for psychiatric evaluation and testing. Dr. B examined the claimant and certified a 15% whole person impairment for the claimant’s psychological condition. After some initial confusion concerning of the applicability 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) (Fourth Edition AMA Guides), the designated doctor certified the claimant with a 19% IR under the Fourth Edition AMA Guides, comprised of 5% for upper extremity impairment, and 15% for depression.¹

The hearing officer did not err in determining that the claimant’s IR is 19%, consistent with the designated doctor’s amended report. The carrier essentially argues that the claimant’s depression did not warrant a rating and the designated doctor’s amended report is, therefore, contrary to the great weight of other medical evidence. The carrier requests adoption of the designated doctor’s original IR certification. Tex. W.C. Comm’n, 28 TEX. ADMIN. CODE § 130.6(i) (Rule 130.6(i)) provides that the designated doctor’s response to a request for clarification is considered to have presumptive weight as it is part of the designated doctor’s opinion. Whether the designated doctor’s report is contrary to the great weight of other medical evidence is a question of fact for the hearing officer to resolve. In view of the evidence presented, we cannot conclude that the hearing officer’s determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The carrier also contends that it was improper for the designated doctor to incorporate the report of Dr. B into his IR certification in the absence of evidence showing that the claimant was referred to Dr. B by the designated doctor. See Rule 130.6(g). In our review of the record, the evidence clearly shows that the designated doctor referred the claimant to Dr. B for psychiatric evaluation and testing related to the claimant’s IR. Accordingly, we perceive no error.

¹ The applicability of the Fourth Edition AMA Guides is not a basis of the carrier’s appeal and, therefore, will not be addressed.

The decision and order of the hearing officer is affirmed.

The true corporate name of the insurance carrier is **LUMBERMENS UNDERWRITING ALLIANCE** and the name and address of its registered agent for service of process is

**DEBRA S. MATHEWS-BUDET
12200 FORD ROAD, SUITE 344
DALLAS, TEXAS 75234.**

Edward Vilano
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Michael B. McShane
Appeals Panel
Manager/Judge