

APPEAL NO. 031531
FILED AUGUST 6, 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 May 20, 2003. The hearing officer resolved the sole disputed issue by deciding that the respondent (self-insured) is entitled to reduce impairment income benefits (IIBs) for the _____, compensable injury in the proportion of 10/29 (34% contribution). The appellant (claimant) appealed the hearing officer's determination. The appeal file does not contain a response from the self-insured.

DECISION

Affirmed.

It is undisputed that the claimant sustained compensable injuries in 1994 and 2000. The claimant sustained a compensable injury to his head and neck on _____. For the 1994 injury, the Texas Workers' Compensation Commission (Commission)-appointed designed doctor, Dr. M, certified on April 16, 1996, 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 edition) that the claimant reached maximum medical improvement (MMI) on August 1, 1995, with 12% whole body impairment rating (IR), which included a 5% impairment for a closed head injury and a 7% impairment for cervical loss of motion. The claimant returned to work and he sustained another compensable injury to his head, neck, back and left shoulder on _____. For the 2000 injury, the Commission-appointed designated doctor, Dr. P, certified on April 15, 2002, using 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, 4th edition) that the claimant reached MMI on February 27, 2002, with a 29% whole body IR, which included a 10% impairment for the head¹, a 5% impairment for the cervical spine (DRE II), a 10% impairment for the lumbar spine (DRE III), and 7% impairment for the left shoulder.

At issue is whether the self-insured is entitled to a reduction of the claimant's IIBs based on contribution from an earlier compensable injury. Section 408.084(a) provides in part that, at the request of an insurance carrier, the Commission may order that IIBs be reduced in a proportion equal to the proportion of a documented impairment that resulted from earlier compensable injuries. In determining the reduction in benefits because of contribution of a prior compensable injury, the Commission is to consider the "cumulative impact of the compensable injuries on the employee's overall impairment" Section 408.084(b). Whether there is a cumulative impact, and, if so,

¹ Under Table 2, p.142, a 10% whole person IR for mental status of decreased reading comprehension and decreased problem solving, with the ability to perform the usual activities of daily living. (AMA Guides, 4th edition)

the amount of such cumulative impact is a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 94578, decided June 22, 1994. It is well-settled that "[s]imply proving the occurrence of a previous compensable injury will not sustain the carrier's burden to prove the interaction of that injury with the current one on the present impairment." Texas Workers' Compensation Commission Appeal No. 971348, decided August 28, 1997. The consideration of the cumulative impact from prior injuries requires an assessment not only of the impairment from previous injuries, but also an analysis of how the injuries work together. Texas Workers' Compensation Commission Appeal No. 950268, decided April 10, 1995. This analysis includes considering the IRs from the prior compensable injuries and the present injury, and the components of the IRs. See Texas Workers' Compensation Commission Appeal No. 950735, decided June 22, 1995; Texas Workers' Compensation Commission Appeal No. 951019 decided August 4, 1995.

The claimant argues that the IR for the 1994 injury was not converted correctly from the AMA Guides, 3rd edition to the AMA Guides, 4th edition. We disagree. In evidence is a Cumulative Impact Analysis, Carrier's Exhibit No. 11, dated May 15, 2003, by Dr. R, the peer review doctor. The Cumulative Impact Analysis reflects that the 1994 injury was converted from the AMA Guides, 3rd edition to the AMA Guides, 4th edition. Specifically, the 5% impairment for a closed head injury was converted to 5% mental impairment and the 7% impairment for cervical loss of motion was converted to 5% cervical impairment (DRE II) under the AMA Guides, 4th edition.

The hearing officer considered the Cumulative Impact Analysis and determined that the proportion of contribution for IIBs is 10/29 (34% contribution) calculated as the ratio of the IR sum of the 1994 injury (12% IR converted to **10% IR** under the AMA Guides, 4th edition), to the 2000 injury (**29% IR** under the AMA Guides, 4th edition). The evidence sufficiently supports the hearing officer's determination that the self-insured is entitled to reduce IIBs for the _____, injury in the proportion of 10/29 (34% contribution).

The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). Having reviewed the record, we are satisfied that the challenged determination of the hearing officer regarding the contribution issue is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Accordingly, the hearing officer's contribution determination is affirmed.

The claimant asserts that the Carrier's Request for Reduction of Income Benefits Due to Contribution (TWCC-33), Claimant's Exhibit No. 8, was not discussed or agreed by him or the self-insured, and that the Employee's Election for Commuted (Lump Sum) Impairment Income Benefits (TWCC-51) was "fabricated" or altered by the self-insured's adjuster. The claimant essentially makes the same arguments on appeal as he did at

the CCH, and the hearing officer considered his arguments in making his determination. We perceive no error.

We affirm the decision and order of the hearing officer.

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

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

Veronica Lopez-Ruberto
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert W. Potts
Appeals Judge