

APPEAL NO. 031617
FILED AUGUST 11, 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 30, 2003. The disputed issue at the CCH was the appellant's (claimant) impairment rating (IR). The hearing officer resolved the disputed issue by deciding that since another designated doctor needs to be appointed, the claimant's IR is not ripe for adjudication. The claimant appeals, asserting that the designated doctor chosen by the Texas Workers' Compensation Commission (Commission) properly applied 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 ed.), and urges reversal. The respondent (carrier) requests affirmance.

DECISION

Affirmed.

The claimant sustained a cervical injury for which she underwent two cervical spinal surgeries. The date of maximum medical improvement is not in dispute. It is undisputed that the AMA Guides 4th ed. is the appropriate edition of the AMA Guides to use in this case to evaluate the claimant's IR. The treating doctor, the designated doctor, and the carrier's required medical examination (RME) doctor all used the AMA Guides 4th ed. to evaluate the claimant's IR. The treating doctor assigned the claimant a 22% IR using the Range of Motion (ROM) Model. The designated doctor assigned the claimant a 19% IR using the ROM Model. The carrier's RME doctor assigned the claimant a 5% IR using the Diagnosis-Related Estimates (DRE) Model (DRE Cervicothoracic Category II). Per page 94 of the AMA Guides 4th ed., the DRE Model is also called the Injury Model. The treating doctor wrote that the ROM Model most correctly described the claimant's IR. The designated doctor wrote in his IR report that he could not put the claimant into any DRE category. A carrier peer review doctor, who reviewed the designated doctor's report, wrote that the DRE Model should be used to assess the claimant's IR and that the IR would be limited to 5%.

Page 94 of the AMA Guides 4th ed. states: "The evaluator assessing the spine should use the Injury Model, if the patient's condition is one of those listed in Table 70 (p. 108)." Page 94 also states: "If none of the eight categories of the Injury Model is applicable, then the evaluator should use the [ROM] Model." Page 99 of the AMA Guides 4th ed. explains that the ROM Model can be used as a differentiator to decide placement within one of the DRE categories, if the physician cannot decide into which DRE category the patient belongs. None of the doctors who assigned the claimant an IR used the ROM Model as a differentiator.

In Texas Workers' Compensation Commission Appeal No. 030288-s, decided March 18, 2003, the Appeals Panel explained that "although there are instances when the ROM Model may be used, such as if none of the categories of the DRE Model are applicable, or as a differentiator, the use of the DRE Model is not optional and is to be used unless there is a specific explanation why it cannot be used."

The Commission requested the designated doctor to clarify why he did not place the claimant in a DRE category. The designated doctor responded that he could not place the claimant in a DRE category because the claimant had a cervical fusion, and on examination she did not have spasms, neurological impairment, or any loss of segmental instability. The hearing officer found that the designated doctor did not properly follow the AMA Guides 4th ed., that he did not provide sufficient justification for not using the DRE Model, and that he would not use the DRE Model to assign the claimant an IR. The hearing officer determined that another designated doctor needs to be appointed, and that the issue of the claimant's IR is premature and not ripe for adjudication because another designated doctor needs to be appointed. The claimant contends that both the designated doctor and her treating doctor properly used the ROM Model. We find the hearing officer's determination that the designated doctor did not provide sufficient justification for not using the DRE Model to be supported by the evidence.

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. In Texas Workers' Compensation Commission Appeal No. 022492, decided November 13, 2002, the Appeals Panel noted that a second designated doctor is rarely appropriate and should be limited to situations where, for example, the first designated doctor cannot or refuses to properly apply the AMA Guides, particularly after being asked for clarification or additional information concerning the report. In the instant case, we conclude that the hearing officer's decision that a second designated doctor should be appointed is supported by the evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**JIM MALLOY
AMERICAN INTERNATIONAL GROUP
8144 WALNUT HILL LANE, SUITE 1600
DALLAS, TEXAS 75231.**

Robert W. Potts
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Thomas A. Knapp
Appeals Judge