

APPEAL NO. 032066  
FILED SEPTEMBER 22, 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 July 11, 2003. The hearing officer resolved the disputed issues by deciding that the respondent's (claimant herein) compensable injury extends to and includes the psychological disorders of mental depression and anxiety and that the claimant's correct impairment rating (IR) is 25%. The appellant/self-insured (carrier herein) appealed, disputing both the extent-of-injury and the IR determinations. The claimant responded, urging affirmance.

DECISION

Affirmed in part and reversed and remanded in part.

We first address the extent-of-injury determination. Extent of injury is a factual question for the hearing officer to resolve. The hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given to the evidence. Section 410.165(a). It is for the hearing officer to resolve the inconsistencies and conflicts in the evidence and to decide what facts the evidence has established. Garza v. Commercial Ins. Co., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This includes the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In this instance, the hearing officer was persuaded that the pain and impairment from the claimant's compensable injury was a producing cause of the claimant's depression and anxiety. The hearing officer was acting within his province as the fact finder in so finding. Nothing in our review of the record reveals that the hearing officer's extent-of-injury determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse that determination on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The parties stipulated that the claimant sustained a compensable injury on \_\_\_\_\_, that included his low back, and reached maximum medical improvement on May 7, 2002, for this injury. Additionally the parties stipulated that Dr. A was the Texas Workers' Compensation Commission (Commission)-selected designated doctor. In a Report of Medical Evaluation (TWCC-69) dated July 21, 2002, Dr. A certified that the claimant had an IR of 27%. Dr. A used the range of motion (ROM) model to assign an IR of 15% for the lower back and assigned a 12% IR due to mental and behavioral changes. The hearing officer noted that Dr. A did not combine the 15% IR for the back and the 12% IR for depression, but rather added them. The hearing officer found that the correct IR was 25% after using the combined values chart 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).

When asked in a clarification letter why the Diagnosis Related Estimates (DRE) model was not used as required by the AMA Guides for assigning lumbar impairment, Dr. A quoting from the AMA Guides page 3-99 replied that “if the physician cannot decide into which DRE category the patient belongs, the physician may refer to and use the ROM model.” Dr. A contended that the AMA Guides recommended using the ROM model for calculating impairment in this instance. However, the AMA Guides continue on page 3-99 stating “the physician uses the estimate determined with the ROM model to decide placement within one of the DRE categories.”

The ROM Model may be used as a differentiator as explained in Texas Workers’ Compensation Commission Appeal No. 022509-s, decided November 21, 2002. That case stated:

If the physician cannot decide into which DRE category the patient belongs, the physician may refer to and use the ROM Model, which is described in Section 3.3j (p. 112). (p. 99). Using the procedures of that model, the physician combines an impairment percent based on the patient’s diagnosis with a percent based on the patient’s spine motion impairment and a percent based on neurologic impairment, if it is present. (p. 99). The physician uses the estimate determined with the ROM Model to decide placement within one of the DRE categories. (p. 99). The proper DRE category is the one having the impairment percent that is closest to the impairment percent determined with the ROM Model. (p. 99).

The hearing officer specifically found that the designated doctor had the flexibility to use the ROM model because he could not decide which DRE category the claimant belonged. We disagree. In Texas Workers’ Compensation Commission Appeal No. 030288-s, decided March 18, 2003, we decided 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, 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. In the instant case, Dr. A has not said that none of the categories of the DRE Model are applicable but rather that he cannot decide into which DRE category the claimant belongs. The AMA Guides specifically state in that situation then the ROM model is to be used as a differentiator to identify the most appropriate category but the DRE model is then used to determine the IR.

The carrier’s appeal of the 12% IR assessed for the psychiatric disorder was based on its contention that the psychiatric disorder was not part of the claimant’s compensable injury. Because we affirm the extent-of-injury determination we also affirm the 12% IR assessed by Dr. A for the claimant’s psychiatric condition.

We affirm the determination that the compensable injury extends to and includes the psychological disorders of mental depression and anxiety. We reverse the hearing officer's decision that the IR is 25% and remand the case to the hearing officer for the hearing officer to request the designated doctor to provide an IR report that is in compliance with the AMA Guides for assigning lumbar impairment and then use the combined values chart of the AMA Guides to combine the impairment assessed for the claimant's psychiatric impairment to determine the claimant's whole person impairment. The hearing officer should ask the designated doctor if a reexamination of the claimant is necessary to complete her report. The hearing officer should provide the parties with a copy of any amended report of the designated doctor to allow the parties an opportunity to respond to any such report.

Pending resolution of a 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 which was amended June 17, 2001, to exclude Saturdays, Sundays, and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See Texas Workers' Compensation Commission Appeal no. 92642, decided January 20, 1993.

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).**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Robert W. Potts  
Appeals Judge