APPEAL NO. 032251
FILED OCTOBER 15, 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 29, 2003. With respect to the issue before him, the hearing officer determined that the respondent (claimant) reached maximum medical improvement on October 25, 2002, with an impairment rating (IR) of 25% for the compensable low back injury of _____. In its appeal, the appellant (carrier) argues that the hearing officer erred in giving presumptive weight to the designated doctor's IR and asserts that there was a disqualifying relationship between the designated doctor and the claimant. In his response to the carrier's appeal, the claimant urges affirmance.

DECISION

Reversed and rendered.

The parties stipulated that the claimant sustained a compensable low back injury on _____; that he reached maximum medical improvement on October 25, 2002; and that Dr. M is the designated doctor selected by the Texas Workers' Compensation Commission (Commission). Dr. M assigned a 25% IR to the claimant pursuant to the lumbosacral diagnosis-related estimate (DRE) Category V for radiculopathy and loss of motion segment integrity. Dr. E, who conducted a peer review for the carrier, opined that the claimant's IR should be 10% in accordance with lumbosacral DRE Category III for radiculopathy. Dr. P, who conducted a required medical examination (RME) of the claimant for the carrier, also opined that the claimant's IR is 10% in accordance with lumbosacral DRE Category III.

Initially, we will consider the carrier's argument that there was a disqualifying relationship between the designated doctor and the claimant. Dr. M treated the claimant approximately eight years ago for a low back injury. As the designated doctor in this instance, Dr. M evaluated the claimant's compensable low back injury, thus, the carrier argues that Dr. M was disqualified to be the designated doctor because the current injury is to the same area as the previous injury. We previously considered and rejected this argument in Texas Workers' Compensation Commission Appeal No. 012199, decided October 18, 2001, where we noted that the prohibition in Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(d)(2)(A) (Rule 130.5(2)(A)) is "specifically limited to a situation where the designated doctor has treated the claimant for the compensable injury at issue and not to the case of the treatment of other conditions." The carrier further argues that Dr. M maintained a personal relationship with the claimant by sending him yearly Christmas cards until approximately two years prior to the current injury. We find no merit in the assertion that a doctor's practice of sending a Christmas card to former patients is the type of personal relationship that would rise to the level of a disqualifying association.

The carrier also argues that the hearing officer erred in giving presumptive weight to the designated doctor's 25% IR because the designated doctor did not properly apply 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) in assessing the claimant's IR. Specifically, the carrier contends that the designated doctor improperly assigned a rating for loss of motion segment integrity in this case because the loss of motion segment integrity was not demonstrated on flexion and extension x-rays, or roentgenograms, as is required by the AMA Guides. In Texas Workers' Compensation Commission Appeal No. 022509-s, decided November 21, 2002, we determined that the AMA Guides require the use of flexion and extension roentgenograms in order to evaluate motion of the spine segments. *See* page 98 of AMA Guides fourth edition, 4th printing, October 1999 and Table 71, No. 5, p. 109. In this case, the record does not demonstrate that flexion and extension roentgenograms were taken and the designated doctor does not indicate that he based his assessment of loss of motion segment integrity on such studies. Because the AMA Guides clearly require such studies in order to evaluate loss of motion segment integrity, the carrier's argument that the designated doctor failed to properly follow the AMA Guides in assigning a Category V rating to the claimant is well taken. That is, because the required flexion and extension roentgenograms do not demonstrate that the claimant has loss of motion segment integrity, the AMA Guides do not provide for assessing an IR under lumbosacral DRE Category V as the designated doctor did here. Thus, the hearing officer erred in giving presumptive weight to that report in accordance with Section 408.125. Accordingly, we reverse the determination that the claimant's IR is 25% and render a new determination that the claimant's IR is 10% as certified by the RME doctor in accordance with lumbosacral DRE Category III for radiculopathy. It is important to emphasize that the claimant did not undergo fusion surgery; thus, the provision of Commission Advisory 2003-10 (signed July 22, 2003), which would enable the designated doctor to assign a rating absent the roentgenograms, is not applicable here.

The hearing officer's determination that the claimant's IR is 25% is reversed and a new decision rendered that the claimant's IR is 10%.

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

STEVE ROPER
1616 SOUTH CHESTNUT STREET
LUFKIN, TEXAS 75901.

_____
Elaine M. Chaney
Appeals Judge

CONCUR:

_____
Judy L. S. Barnes
Appeals Judge

_____
Chris Cowan
Appeals Judge