

APPEAL NO. 032536  
FILED NOVEMBER 13, 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 August 25, 2003. The hearing officer determined that the impairment rating (IR) of respondent (claimant) cannot be determined and that, without an IR, it cannot be determined whether claimant is entitled to supplemental income benefits for the first quarter. Appellant (carrier) appeals contending that: (1) the lumbosacral area was the region to be rated; (2) the designated doctor was accurate when he said that if the lumbosacral area was rated under 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), the claimant's IR is 10%; (3) Texas Workers' Compensation Commission (Commission) Advisory 2003-10 is dated July 22, 2003, and does not apply because it was not in existence when the designated doctor issued his first report; (4) Commission Advisory 2003-10 should not be applied retroactively; (5) Commission Advisory 2003-10 is not mandatory and it is not error if a doctor chooses not to apply it; and (6) Diagnosis-Related Estimate (DRE) Category III applies and claimant's IR should be 10%. Carrier contends that the Appeals Panel should render a decision that claimant's IR is 10%. Claimant responded that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We reverse and remand.

Carrier contends the hearing officer erred in failing to determine that claimant's IR is 10%. Carrier contends the hearing officer erred in determining that the designated doctor should be instructed regarding Commission Advisory 2003-10. We disagree. In Texas Workers' Compensation Commission Appeal No. 032399-s, decided November 3, 2003, we said that, for hearings held after July 22, 2003, involving IRs for spinal surgery that would be affected by Commission Advisory 2003-10, it is error not to consider and apply that advisory. Therefore, because the claimant in this case had a multilevel fusion, the hearing officer properly concluded that the designated doctor should consider and apply Commission Advisory 2003-10. It appears that the hearing officer intends to seek clarification in this regard, though the hearing officer has not yet done so for some reason. We do note that in Texas Workers' Compensation Commission Appeal No. 032402-s, decided November 3, 2003, we said that although Commission Advisory 2003-10 provides for placement in DRE Category IV for loss of motion segment integrity based on the existence of a multilevel fusion, the AMA Guides instruct that the condition provided for in DRE Category IV, coupled with radiculopathy, would warrant placement in DRE Category V. This may also be considered by the hearing officer and the designated doctor.

In this case, the hearing officer did not seek clarification from the designated doctor and then determine the claimant's IR. Therefore, we must remand for him to do so.

We reverse the hearing officer's decision and order and remand for further proceedings consistent with this decision. Pending resolution of the 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 and 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.

According to information provided by carrier, the true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MR. RUSSELL R. OLIVER, PRESIDENT  
221 WEST 6TH STREET  
AUSTIN, TEXAS 78701.**

---

Judy L. S. Barnes  
Appeals Judge

CONCUR:

---

Margaret L. Turner  
Appeals Judge

---

Edward Vilano  
Appeals Judge