

APPEAL NO. 033280
FILED FEBRUARY 11, 2004

This case returns following our remand in Texas Workers' Compensation Commission Appeal No. 031874, decided September 5, 2003, where we remanded so that additional clarification could be sent to the designated doctor selected by the Texas Workers' Compensation Commission (Commission) concerning his decision to determine the respondent's (claimant) impairment rating (IR) using the Range of Motion (ROM) model 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) rather than the lumbosacral Diagnosis-Related Estimates (DRE) model. A hearing on remand was held on November 21, 2003. On remand, the hearing officer determined that the claimant's IR is 16%. In its appeal, the appellant (carrier) argues that the hearing officer erred in making that determination and contends that the claimant's IR should be 5%, the rating the designated doctor assigned under the DRE model. The appeal file does not contain a response to the carrier's appeal from the claimant.

DECISION

Affirmed.

The facts of this case are set out in our decision in Appeal No. 031874 and will not be repeated here. On remand, the Commission sent a letter of clarification to the designated doctor asking him the five questions specified in Appeal No. 031874. In response to that letter of clarification, the designated doctor stated:

I am in receipt of your letter regarding whether the patient can be placed in DRE category using table 70. At best, the patient falls into DRE category II using 2nd row table, page 3/108. This does not give total justification to the patient, however based on this the patient will have 5% [IR] following table 72, p3-11.

In Finding of Fact No. 12, the hearing officer determined that "the opinion of [the designated doctor] is that the [DRE] model results in an [IR] that is too low for Claimant when her [IR] is compared with that obtained from the [ROM] model." In Finding of Fact No. 13, the hearing officer determined that the fourth edition of the AMA Guides "authorizes use of the [ROM] model in such instances." We cannot agree with the carrier's assertion that the hearing officer erred in making those findings or in determining that the claimant's IR is 16%. In his response to the letter of clarification on remand, the designated doctor noted that "at best" the claimant fell within lumbosacral DRE Category II. In addition, the designated doctor specifically stated that the DRE rating "does not give total justification to the patient." Based on the designated doctor's use of this hedging language, the hearing officer determined that the designated doctor did not believe that the DRE Category II rating reflected the true nature of the claimant's

impairment that resulted from her compensable injury. The hearing officer's interpretation of the designated doctor's response in that regard is a reasonable interpretation. In Texas Workers' Compensation Commission Appeal No. 032317-s, decided October 2, 2003, we reversed and rendered a new determination that the claimant's IR was 20%, which had been calculated by the designated doctor using the ROM model as a differentiator after the designated doctor determined that the claimant's IR that had been determined under the DRE model did not accurately reflect the true nature of his impairment from the compensable injury. The designated doctor's use of the ROM model in this instance is similar to the designated doctor's decision to use the ROM model in Appeal No. 032317-s, except that he actually calculated the IR under the ROM model rather than using it as a differentiator, which he was entitled to do under the language of the AMA Guides. Thus, under the reasoning of Appeal No. 032317-s, the designated doctor did not err in turning to the ROM model to determine the claimant's IR based upon his belief that the IR determined under the DRE model did not encompass the claimant's impairment and the hearing officer likewise did not err in giving presumptive weight to the designated doctor's report and determining that the claimant's IR is 16%.

The hearing officer's decision and order are affirmed.

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

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Thomas A. Knapp
Appeals Judge