

APPEAL NO. 040073
FILED FEBRUARY 18, 2004

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 December 4, 2003. The hearing officer decided that the appellant (claimant) reached maximum medical improvement (MMI) on February 10, 2003, with a 2% impairment rating (IR), as certified by the designated doctor appointed by the Texas Workers' Compensation Commission (Commission). The claimant appeals the hearing officer's IR determination, asserting that the designated doctor misapplied 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) (Fourth Edition AMA Guides) and that such report is contrary to the great weight of the other medical evidence. The respondent (carrier) urges affirmance. The hearing officer's MMI determination was not appealed and has become final. Section 410.169.

DECISION

Affirmed.

It is undisputed that the claimant sustained a compensable injury to her left hip, on _____. The claimant underwent a hemiarthroplasty of the left hip, on August 21, 2001. Following surgery, the claimant received physical rehabilitation and was placed on a home exercise program. The claimant was examined by a Commission-appointed designated doctor and was certified with a 2% IR, under Table 40 of the Fourth Edition AMA Guides, for loss of range of motion (ROM) in the left hip. The claimant's treating doctor later certified a 20% IR, using the diagnosis related estimate for total hip replacement with fair results under Table 64 of the Fourth Edition AMA Guides. In his report, the treating doctor stated,

In the AMA Guidelines, a specific example is given as to when to use the diagnosis-specific impairment rating and it is the case of a hip replacement. Therefore, I think it is reasonable in this patient's case to use the diagnosis-specific impairment rating rather than a general impairment rating as done by the [designated] doctor.

The Commission requested clarification of the designated doctor's report, in a letter dated April 16, 2003, in view of the treating doctor's report. The designated doctor responded, "Review of this document does not cause me to change or otherwise alter any of the opinions expressed in my report dated February 12, 2003." The claimant was subsequently examined by a required medical examination (RME) doctor. The RME doctor certified a 20% IR, applying essentially the same analysis as the claimant's treating doctor.

The hearing officer did not err in determining that the claimant has a 2% IR. As indicated above, the claimant asserts that the designated doctor misapplied the Fourth Edition AMA Guides, when he assigned an IR under Table 40 for loss of ROM in the left hip. The claimant also asserts that the designated doctor's report is contrary to the great weight of the other medical evidence and requests adoption of her treating doctor's or the carrier RME doctor's report. We note that, under Section 3.2e, page 77 of the Fourth Edition AMA Guides, evaluating permanent impairment of the lower extremity according to its ROM is a suitable method. See Texas Workers' Compensation Commission Appeal No. 030174, decided March 10, 2003 (involving a rating under Table 40 of the Fourth Edition AMA Guides for a compensable left knee injury, which included a partial medial meniscectomy). We view the reports of the treating doctor and RME doctor as representing a difference in medical opinion, which does not rise to the level of the great weight of medical evidence contrary to the designated doctor's report. Accordingly, the hearing officer's IR determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer's decision and order is affirmed.

The true corporate name of the insurance carrier is **LUMBERMENS MUTUAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Edward Vilano
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Thomas A. Knapp
Appeals Judge