

APPEAL NO. 040126
FILED MARCH 11, 2004

This appeal after remand 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 June 18, 2003. The hearing officer determined that the impairment rating (IR) of respondent (claimant) is 16%, in accordance with the report of the Texas Workers' Compensation Commission (Commission)-selected designated doctor. Appellant (carrier) appealed this determination, contending that the designated doctor improperly applied 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), and improperly rated the cervical injury. Carrier also complained about one finding of fact concerning the shoulder injury and also contended that the hearing officer abused his discretion in excluding an exhibit. The file did not contain a response from claimant. In Texas Workers' Compensation Commission Appeal No. 031862, decided September 4, 2003, we reversed the hearing officer's decision and order and remanded 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, fourth edition. The designated doctor amended his report and certified a 26% IR. After a November 4, 2003, and December 17, 2003, hearing on remand, the hearing officer issued a decision according presumptive weight to the designated doctor's report. Carrier again appeals, contending that the hearing officer should have adopted the report of Dr. S. Carrier contends that the designated doctor should not have considered Commission Advisory 2003-10, that the advisory does not comport with the AMA Guides, and that the designated doctor should not have placed claimant in Diagnosis-Related Estimate (DRE) Category IV even though she had a two-level cervical fusion. Carrier also contends that the hearing officer erred in excluding the report of Dr. T.

DECISION

We affirm.

Carrier contends that the hearing officer erred in excluding the report of Dr. T. Dr. T's redacted report was not written regarding claimant, but concerned the use of and applicability of Advisory 2003-10. It was written regarding another case and another claimant. Carrier asserts that the report concerns what weight the hearing officer should have given to the advisory. The report criticizes the above-mentioned advisory. Carrier also appears to contend that that report responds to a letter from Dr. N. However, carrier was the one who offered the letter from Dr. N, not claimant.

Our standard of review regarding the hearing officer's evidentiary rulings is one of abuse of discretion. Texas Workers' Compensation Commission Appeal No. 92165, decided June 5, 1992. To obtain reversal of a decision based upon the hearing officer's abuse of discretion in the admission or exclusion of evidence, an appellant must first

show that the admission or exclusion was in fact an abuse of discretion, and also that the error was reasonably calculated to cause and probably did cause the rendition of an improper decision. Texas Workers' Compensation Commission Appeal No. 92241, decided July 24, 1992; see *also Hernandez v. Hernandez*, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ). We have reviewed the report in question and conclude that any error in the exclusion of the report was not reasonably calculated to cause and probably did not cause the rendition of an improper decision in this case.

Carrier contends the hearing officer erred in determining that claimant's IR is 26%. The general background facts are set forth in our prior decision and we will not repeat them here. Carrier asserts that the designated doctor should not have followed Advisory 2003-10, that the advisory is incorrect, that the advisory is contrary to the AMA Guides, and that the designated doctor should not have placed claimant in DRE Category IV based on the advisory. Whether the Commission exceeded its authority in issuing Advisory 2003-10 is a matter for the courts. See Texas Workers' Compensation Commission Appeal No. 031441, decided July 23, 2003.

Carrier contends that flexion and extension x-rays were taken in this case, so the designated doctor erred in placing claimant in DRE Category IV pursuant to the advisory. The record does not reflect that preoperative flexion and extension x-rays were taken in this case. We have considered carrier's assertions in this regard and we perceive no reversible error.

We affirm the hearing officer's decision and order.

According to information provided by carrier, 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.**

Judy L. S. Barnes
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Margaret L. Turner
Appeals Judge