

APPEAL NO. 040371  
FILED MARCH 29, 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 January 29, 2004. The hearing officer determined that the appellant's (claimant) impairment rating (IR) was 10% and that the IR of the designated doctor was contrary to the great weight of the other medical evidence.

The claimant appealed, contending that his IR was 15% as assessed by the designated doctor and that his rating should include a 5% impairment under Diagnosis-Related Estimate (DRE) Cervicothoracic Category II (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)) Table 73 because the respondent (carrier) accepted a cervical sprain/strain. The carrier responded, urging affirmance.

DECISION

Affirmed.

It is undisputed that the claimant sustained a compensable cervical and lumbar spine injury on \_\_\_\_\_. The claimant had lumbar spine surgery on July 25, 2002, and the parties stipulated that the claimant reached maximum medical improvement on December 2, 2002. It is also undisputed that the claimant is entitled to a 10% impairment under DRE Lumbrosacral Category III: Radiculopathy, for the lumbar spine injury. The only matter in dispute is whether the claimant should be rated at DRE Cervicothoracic Category I: Complaints or Symptoms, with a 0% IR or DRE Cervicothoracic Category II: Minor Impairment, with a 5% IR. Our comments will only focus on the cervical injury.

Dr. W, the designated doctor, assessed DRE Category II for the cervical injury. In this report dated December 2, 2002, Dr. W commented, that the claimant "noticed cervical pain initially which resolved [within] 4-5 months." The claimant had been prescribed therapy "4 mo. to neck and low back." Dr. W noted that the claimant "now denies any neck pain and has no complaints of pain, numbness, tingling or weakness in the arms." The cervical exam indicated "good motion in all places of the neck with no muscle spasms present. There was no sign of pain on compression of the neck." Dr. W does not indicate why he selected DRE Category II rather than Category I.

A peer review report dated December 18, 2002, disagrees with Dr. W's cervical rating indicating the claimant should be rated under DRE Category I with a 0% impairment according to the "5th Edition DRE Cervical Category I." The peer review report was apparently sent to the designated doctor who responded in an undated letter stating that his (the designated doctor's) calculations were correct and that the "5th

edition is not used.” The claimant was examined by a carrier required medical examination doctor, who in a report dated April 28, 2003, found no complaints or soreness of the neck and would have given no impairment for the cervical spine which “was not ‘injured.’”

Dr. H, a referral doctor from the treating doctor also examined the claimant on November 26, 2003, and initially assessed the claimant with a 5% impairment under DRE Category II. However, in a letter dated December 1, 2003, Dr. H rescinded his rating explaining that the initial assessment “was based on the medical records of a different patient with the same name.” (The claimant questioned how this error was brought to the doctor’s attention.) Dr. H issued an amended report assessing the claimant under DRE Category I with a 0% for his cervical injury impairment commenting:

1. Complaints or Symptoms: The patient has no significant clinical findings, no muscular guarding or history of guarding, no documentable neurologic impairment, no significant loss of integrity on lateral flexion and extension roentgenograms, and no indication of impairment related to injury or illness. Additionally, there are no structural inclusions. Therefore, the DRE cervicothoracic spine whole person impairment is 0%.

(We note that this description tracks the description and verification of DRE Cervicothoracic Category I.)

DRE Cervicothoracic Category II: Minor Impairment has the description as follows:

Description and Verification: The history and findings are compatible with a specific injury and include intermittent or continuous muscle guarding observed by a physician, nonuniform loss of range of motion (dysmetria, differentiator 1, Table 71, p. 109), or nonverifiable radicular complaints. There is no objective evidence of radiculopathy or loss of structural integrity.

The hearing officer comments that Dr. W’s report “appears to be based on the Claimant’s history, as related by Claimant.” That appears to be speculation as we are unable to determine how Dr. W arrived at the DRE Category II rating.

We are cognizant that Section 408.125(c) gives the designated doctor’s report presumptive weight and that report should not be rejected absent a substantial reason to do so. Texas Workers’ Compensation Commission Appeal No. 93483, decided July 26, 1993. Section 401.011(24) defining IR speaks of permanent impairment and Tex. W.C. Comm’n, 28 TEX. ADMIN. CODE § 130.1(c)(3) (Rule 130.1(c)(3)) states the doctor assessing an IR will identify and document specific clinical and objective findings of an impairment. The hearing officer noted that the medical records do not contain any objective medical data supporting muscle guarding or other elements necessary for

DRE Category II. The claimant's appeal is premised on the fact that the carrier has accepted a compensable cervical sprain/strain, that a sprain/strain is an injury as defined in Section 401.011(26) "and therefore DRE Category II is appropriate." We appreciate that the claimant has a compensable cervical sprain/strain injury but fail to make the leap why DRE Category II, rather than DRE Category I, is appropriate. Dr. W, the designated doctor, gave no reason why DRE Category II rather than DRE Category I should be used and his narrative appeared to support a rating of DRE Category I.

The hearing officer explained why he rejected the designated doctor's report as being contrary to the great weight of the other medical evidence and accepted Dr. H's 10% IR for DRE Lumbrosacral Category III for the back, which includes the assessment of DRE Category I with 0% impairment for the accepted cervical injury. We have reviewed the record and the complained-of determinations. We conclude that the hearing officer's determinations are 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, 176 (Tex. 1986).

We affirm the hearing officer's decision and order.

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

**ROBIN M. MOUNTAIN  
6600 CAMPUS CIRCLE DRIVE EAST, SUITE 300  
IRVING, TEXAS 75063.**

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Robert W. Potts  
Appeals Judge