

APPEAL NO. 040400
FILED APRIL 15, 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 22, 2004. The hearing officer determined that the respondent's (claimant) impairment rating (IR) is 25%. The appellant (carrier) appeals this determination. The claimant urges affirmance of the hearing officer's decision.

DECISION

Affirmed.

The evidence reflects that, as a result of the compensable injury, the claimant underwent a multilevel lumbar fusion on August 2, 2000. The Texas Workers' Compensation Commission (Commission) appointed Dr. S to serve as the designated doctor. Dr. S examined the claimant, considered Commission Advisory 2003-10, dated July 22, 2003, and certified that the claimant's condition warranted a rating under the Diagnosis-Related Estimate (DRE) category V 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) for multilevel fusion with radiculopathy and assigned a 25% IR. The hearing officer found that the presumptive weight afforded to Dr. S's certification had not been overcome by the great weight of the other medical evidence and concluded that the claimant's correct IR is 25%.

Commission Advisory 2003-10 provides in part:

Clarification of Rating for Spinal Fusion(s).

For spinal fusion, the [IR] is determined by the preoperative x-ray tests for "motion segment integrity" (page 102, 4th Edition of the Guides to the Evaluation of Permanent Impairment). If preoperative x-rays were not performed, the rating may be determined using the following criteria:

* * * *

- b. Multilevel fusion meets the criteria for [DRE] Category IV, Structural Inclusions, **as this multilevel fusion is equivalent to "multilevel spine segment structural compromise"** per DRE IV. [Emphasis in original.]

The carrier makes two arguments on appeal: that the advisory is invalid and, alternatively, even if it is valid, it is inapplicable in this case. With regard to the argument that the advisory is inapplicable, the carrier asserts that it was error to apply

the advisory because “it is undisputed that the claimant had x-rays performed prior to surgery.” While the advisory states that it is applicable where pre-operative x-rays were not performed, the AMA Guides specify that the x-rays referred to are flexion and extension roentgenograms (p. 98 and Table 71, No. 5, p.109). See *also* Texas Workers’ Compensation Commission Appeal No. 022509-s, decided November 21, 2002. There is no evidence that the required roentgenograms were performed and, in fact, the carrier’s peer review doctor, Dr. G, points out in his report dated September 12, 2002, that the claimant had no “roentgeonogenic studies.” Accordingly, we cannot agree that it was inappropriate to apply the advisory in this case.

With regard to the carrier’s argument that the advisory is invalid, whether the Commission exceeded its authority in issuing Advisory 2003-10 is a matter for the courts and will not be addressed here. See Texas Workers’ Compensation Commission Appeal No. 032260, decided October 16, 2003.

Section 408.125(e) provides that for injuries occurring prior to June 17, 2001, where there is a dispute as to the IR, the report of the Commission-selected designated doctor is entitled to presumptive weight unless it is contrary to the great weight of the other medical evidence. Whether the great weight of the other medical evidence was contrary to the opinion of the designated doctor was a factual question for the hearing officer to resolve. Nothing in our review of the record indicates that the hearing officer’s decision is 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).

The decision and order of the hearing officer are 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
701 BRAZOS, SUITE 1050
AUSTIN, TEXAS 78701.**

Chris Cowan
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Edward Vilano
Appeals Judge