

APPEAL NO. 040723  
FILED MAY 24, 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 February 19, 2004. The hearing officer determined that the \_\_\_\_\_, compensable injury of respondent (claimant) includes spinal stenosis and degenerative disc disease and that claimant's impairment rating (IR) is 20%. Appellant (carrier) appealed these determinations on sufficiency grounds, and also contends that the designated doctor did not correctly apply 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). Claimant responded that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm in part and reverse and remand in part.

We have reviewed the complained-of determinations regarding extent of injury and conclude that the issues involved fact questions for the hearing officer. The hearing officer reviewed the record and decided what facts were established. We conclude that the hearing officer's determinations are supported by the record and 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).

Carrier contends that the hearing officer erred in determining that claimant's IR is 20%. The hearing officer accorded presumptive weight to the designated doctor's third report, in which the designated doctor certified that claimant reached maximum medical improvement (MMI) on March 4, 2003, with an IR of 20%. It is undisputed that claimant reached MMI on the date of statutory MMI, which is March 11, 2003.<sup>1</sup> The designated doctor said in his third report that he considered Texas Workers' Compensation Commission (Commission) Advisory 2003-10 (signed July 22, 2003). He noted that claimant underwent a multi-level fusion on April 22, 2003, and said claimant's impairment meets the requirements for Diagnosis-Related Estimate (DRE) Category IV. However, in certifying the 20% IR, the designated doctor considered fusion surgery and conditions that arose after statutory MMI. IR assessments made after statutory MMI should be based on the injured employee's condition as of the date of statutory MMI. See Texas Workers' Compensation Commission Appeal No. 040313-s, decided April 5, 2004; Texas Workers' Compensation Commission Appeal No. 040583-s, decided May 3, 2004. Because the designated doctor did not assess the 20% IR based on claimant's condition as of the date of statutory MMI, the hearing officer erred in according presumptive weight to the designated doctor's third report. We reverse the hearing officer's determination that claimant's IR is 20% and remand for further proceedings

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<sup>1</sup> It does not appear that MMI was extended under Section 408.104.

consistent with this decision. The hearing officer should seek clarification from the designated doctor regarding claimant's IR at the time of MMI. After obtaining clarification, the hearing officer should allow comment by the parties and reconsider the IR issue.

We affirm that part of the hearing officer's decision and order that determined that claimant's compensable injury includes spinal stenosis and degenerative disc disease. We reverse that part of the hearing officer's decision that determined that claimant's IR is 20% and remand for further proceedings consistent with this decision.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Commission's Division of Hearings, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

According to information provided by carrier, the true corporate name of the insurance carrier is **TEXAS BUILDERS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**BETTYE ANN ROGERS WESLEY  
11612 RM 2244 (BEE CAVES ROAD), BUILDING 1, SUITE 200  
AUSTIN, TEXAS 78738.**

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Judy L. S. Barnes  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Edward Vilano  
Appeals Judge