

APPEAL NO. 040788
FILED MAY 26, 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 March 16, 2004. The hearing officer determined that the respondent's (claimant) impairment rating (IR) is 16% as certified by the Texas Workers' Compensation Commission (Commission)-appointed designated doctor. The appellant (carrier) appealed, asserting that the designated doctor's certification is against the great weight of the other medical evidence and not in compliance with 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). The appeal file does not contain a response from the claimant.

DECISION

Affirmed.

The carrier contends that the designated doctor incorrectly applied the AMA Guides in certifying that the claimant has a 16% IR because there is no credible evidence that the claimant has "sufficient" cervical radiculopathy to be placed in Diagnosis-Related Estimates Category III (DRE III) of Table 73. The carrier further contends that the great weight of the other medical evidence is contrary to the designated doctor's certification of IR. The carrier had a peer review of the designated doctor's report performed, which essentially concluded that the claimant did not suffer from cervical radiculopathy. On May 22, 2003, the Commission forwarded the peer review report to the designated doctor and asked for his comments. On July 15, 2003, the designated doctor responded indicating that his opinion remained unchanged. In his response, the designated doctor stated that:

As noted in my records, [claimant] noticed pain in her right sided neck region with extension into the right upper limb. Electrodiagnostic evaluation suggested a peripheral nerve process in the elbow and the wrist consistent with cubital tunnel or carpal tunnel syndrome. She had operative interventions, but continued with upper limb pain extending from the neck into primary digits 4 and 5. She also had a disc displacement. This would all corroborate the presence of a cervical radiculopathy and this would be my primary diagnostic finding given the evidence when I saw her on 5/10/02.

Section 408.125 of the 1989 Act provides that a report of a Commission-selected designated doctor shall have presumptive weight on the issue of IR, and the Commission shall base its determination on such report, unless the great weight of other medical evidence is to the contrary. Whether the great weight of the other

medical evidence was contrary to the opinion of the designated doctor is basically a factual determination. Texas Workers' Compensation Commission Appeal No. 93459, decided July 15, 1993. We have reviewed the complained-of determination and conclude that the issue involved a fact question for the hearing officer. The hearing officer reviewed the record and decided what facts were established. We conclude that the hearing officer's determination is supported by the record and 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, 176 (Tex. 1986).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **TRAVELERS INDEMNITY COMPANY OF CONNECTICUT** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Daniel R. Barry
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Margaret L. Turner
Appeals Judge