

APPEAL NO. 040863  
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 March 12, 2004. The hearing officer determined that the appellant (claimant) has a 10% whole person impairment rating (IR), and that the Texas Workers' Compensation Commission (Commission) acted appropriately by not appointing a third designated doctor in accordance with Section 408.122. The claimant appealed the hearing officer's determinations based on sufficiency of the evidence and asserted that his correct IR is 17%. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable right knee injury on \_\_\_\_\_, that the claimant reached statutory maximum medical improvement on June 11, 2002, and that the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides) is controlling in this case.

It is undisputed that Dr. S was appointed as the second designated doctor in this case. In a report dated July 17, 2002, Dr. S assigned a 17% IR based on 25% impairment for both menisci (10% whole person impairment), 15% impairment for anterior cruciate ligament (ACL) tear (6% whole person impairment), and 10% for chondromalacia (4% whole person), combined to form the 17% IR. The carrier's peer review doctor, Dr. C, in a letter dated December 31, 2003, opined that Dr. S's IR was incorrectly calculated. The Commission requested a letter of clarification on several occasions from Dr. S regarding his IR calculations. In a report dated April 29, 2003, Dr. S amended his report and assigned a 24% IR, based on 10% impairment for the lateral medial meniscal tears and 15% for the ACL tear for a combined value of 24% from "the Combined Values Chart on Page 246." In a report dated June 17, 2003, Dr. C stated that Dr. S's IR is incorrect because "[Dr. S] should have converted the 24% impairment of the lower extremity to whole. According to Table 42, page 65, this would convert to a 10% whole person value." In a report dated September 23, 2003, Dr. S responded that he stood by his 24% IR.

For a claim for workers' compensation benefits based on a compensable injury that occurs before June 17, 2001, Section 408.125(e) provides that the designated doctor's report has presumptive weight, and the Commission shall base its determinations of IR on that report unless the great weight of the other medical evidence is to the contrary. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.6(i) (Rule 130.6(i)) provides that the designated doctor's response to a Commission request for clarification is considered to have presumptive weight as it is part of the doctor's

opinion. In the instant case, the hearing officer found that Dr. S did not convert the 24% impairment for the lower extremity to a 10% whole person IR, according to Table 42, page 65. Carrier's Exhibit No. K, an excerpt of the AMA Guides, Section 3.2e, "Lower Extremity-Involvement of Multiple Units," page 65, states that:

Measure separately and record the impairment of the lower extremity contributed by each unit (foot, ankle, and subtablar joints, knee joint, and hip joint). Then, combine the impairment values using the Combined Values Chart.

\* \* \* \* \*

Finally consult Table 42 to determine the impairment of the whole person that is contributed by the lower extremity.

The evidence sufficiently supports the hearing officer's determination that the 24% impairment of the lower extremity converts to 10% whole person impairment according to Table 42, page 65. The Appeals Panel has held that a hearing officer may apply a mathematical correction to a certification of IR when doing so simply corrects an obvious mathematical error and does not involve the exercise of judgment as to what the proper figures were. Texas Workers' Compensation Commission Appeal No. 992223, decided November 15, 1999. See *also* Texas Workers' Compensation Commission Appeal No. 000028, decided February 22, 2000, in which the Appeals Panel affirmed the hearing officer's mathematical correction of the IR and application of the Combined Values Chart and Table 42. The hearing officer's IR determination is sufficiently supported by the evidence and nothing in our review of the record demonstrates that the challenged determination is so contrary to the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists to reverse the hearing officer's decision on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Given our affirmance of the IR determination, we likewise affirm the hearing officer's determination that as the Commission was able to correct a mathematical error in the designated doctor's findings, the Commission acted appropriately by not appointing a third designated doctor in accordance with Section 408.122.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **UNITED STATES FIDELITY & GUARANTY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
800 BRAZOS  
AUSTIN, TEXAS 78701.**

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Veronica L. Ruberto  
Appeals Judge

CONCUR:

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Chris Cowan  
Appeals Judge

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Margaret L. Turner  
Appeals Judge