

APPEAL NO. 041825
FILED SEPTEMBER 13, 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 (CCH) was held on June 22, 2004. The hearing officer determined that the designated doctor's 40% impairment rating (IR) was contrary to the great weight of the other medical evidence and adopted the 10% IR of the respondent (carrier)-required medical examination (RME) doctor.

The appellant (claimant) appeals, contending that the designated doctor's IR was correct and that she does have cauda equina-like syndrome with demonstrated, permanent, partial loss of lower extremity function bilaterally. The claimant also contends evidentiary error in the admission of a Report of Medical Evaluation (TWCC-69) form. The carrier responded, urging affirmance.

DECISION

Affirmed.

It is undisputed that the claimant sustained a low back injury on _____, and that she has had three surgeries. The parties stipulated that the claimant reached maximum medical improvement on May 7, 2002. The designated doctor, Dr. W assessed a 40% IR for Diagnosis-Related Estimate (DRE) Lumbosacral Category VI: Cauda Equina-like Syndrome Without Bowel or Bladder signs (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)). Dr. G the carrier RME doctor assessed a 10% IR for DRE Lumbosacral Category III: Radiculopathy. It is undisputed that the claimant has some radiculopathy or radiculitis. The crux of the case is whether there is the "objectively demonstrated, permanent, partial loss of lower extremity function bilaterally" required for a DRE Category VI rating.

The hearing officer commented that the designated doctor's report indicated that the claimant "has a normal walking gait" and functional tests "showed normal heel and toe walking." Dr. G testified that he found no objective evidence of bilateral lower extremity partial loss of function to support a DRE Category VI rating. The hearing officer notes that Dr. W was asked for clarification on two occasions and although he responded to the inquiries "he does not justify his finding of permanent partial loss of function other than to say the difference in thigh circumference of 2 cm indicates muscle atrophy due to radiculopathy." The hearing officer comments that that statement does not show bilateral loss of function.

The Appeals Panel has held that whenever a hearing officer rejects a designated doctor's report the hearing officer should clearly detail the evidence relevant to his or

her consideration and clearly state why the other evidence is to the contrary. Texas Workers' Compensation Commission 030091-s, decided March 5, 2003. We believe the hearing officer has done so in this case where the medical evidence failed to show bilateral lower extremity partial loss of function to support the DRE Category VI rating.

We find that the hearing officer clearly detailed the evidence relevant to his consideration on whether to afford the designated doctor's report presumptive weight and clearly stated why the other evidence is to the contrary. We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Regarding the claimant's contention that the front page of the TWCC-69 form was improperly admitted, our review of the record indicates that the report had been timely exchanged but that the claimant's objection at the CCH was that the form (and presumably the rest of the report) was not completed at the time of the examination and that "[Dr. G] did this recently and he did not do it when [the claimant] was there." We perceive no error in the hearing officer's ruling.

The hearing officer's decision and order are affirmed.

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.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Edward Vilano
Appeals Judge