APPEAL NO. 042153
FILED OCTOBER 20, 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 August 3, 2004. The hearing officer determined that the respondent (claimant) reached maximum medical improvement (MMI) on "February 24, 2002" (sic, should be 2004 but MMI is not an issue) with a 15% impairment rating (IR) as assessed by the designated doctor whose opinion has not been overcome by the great weight of contrary medical evidence.

The appellant (carrier) appeals, contending that there is insufficient evidence of radiculopathy to warrant a finding of a 15% IR. The file does not contain a response from the claimant.

DECISION

Affirmed

It is undisputed that the claimant sustained a compensable injury on _____, and that the rated body part at issue is the cervical spine. The parties stipulated that the claimant reached MMI on February 24, 2004. It is also relatively undisputed that the only Report of Medical Evaluation (TWCC-69) and narrative in evidence is one dated March 4, 2004, from Dr. S, the designated doctor (the claimant was also examined by a required medical examination (RME) doctor on May 6, 2004, which will be mentioned later). Dr. S assessed a 15% IR based on Diagnosis-Related Estimate (DRE) Cervicothoracic Category III: Radiculopathy, using 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). Dr. S notes "[d]eep tendon reflexes were decreased but equal bilaterally," and comments:

> A full physical examination with range of motion was performed of the cervical spine. In addition, a neurologic examination was performed to include testing of reflexes and girth measurements to determine the presence of atrophy to evaluate for impairment of strength and sensory of the upper extremities as a result of the spine injury.

(The results of the reflex testing and girth measurements were not included in the report.) Dr. S concludes, "acknowledging Advisory 2003-10, [signed July 25, 2003]" the claimant "meets the criteria for DRE Category II" but the "examinee has objective evidence of radiculopathy present and therefore she is a category III, DRE . . . ."

The carrier contends that the designated doctor's IR should be disregarded because Dr. S "fails to detail the objective evidence of radiculopathy as required by the

AMA Guides and the Appeals Panel" citing Texas Workers' Compensation Commission Appeal No. 030091-s, decided March 5, 2003, and Texas Workers' Compensation Commission Appeal No. 031269, decided July 3, 2003. Page 3-104 of the AMA Guides states:

> **DRE Cervicothoracic Category III: Radiculopathy**
>
> Description and Verification: The patient has significant signs of radiculopathy, such as (1) loss of relevant reflexes or (2) unilateral atrophy with greater than a 2-cm decrease in circumference compared with the unaffected side, measured at the same distance above or below the elbow. The neurologic impairment may be verified by eletrodiagnostic or other criteria (differentiators 2, 3, and 4, Table 71, p. 109. [Emphasis added.]

Appeal No. 030091-s, *supra*, was a case where the hearing officer rejected the designated doctor's report and used the treating doctor's 15% IR. The Appeals Panel reversed and remanded that decision because the hearing officer failed to detail the evidence relevant to the hearing officer's rejection of the designated doctor's report and noted that the designated doctor did not appear to have all the relevant records before him. The remand instructed that if the hearing officer was to reject the designated doctor's report he was to "detail and consider all the evidence . . . regarding atrophy, loss of reflexes, and radiculopathy" and "clearly state why the other evidence is contrary to the report of the designated doctor." Similarly in Appeal No. 031269, *supra*, the hearing officer accepted the 5% IR of an RME doctor, but in that case the "hearing officer clearly detailed the evidence" contrary to the designated doctor's report. The cases do not, as the carrier suggests, stand for the proposition "that a designated doctor must detail the atrophy, loss of reflexes or electrodiagnostic testing upon which he relies if he elects to increase a claimant's DRE Category based upon the presence of radiculopathy." In both the cited cases the Appeals Panel noted that "Section 408.125(e)," now recodified as Section 408.125(c) for this case, provides that:

> The report of the designated doctor shall have presumptive weight, and the [Texas Workers' Compensation Commission (Commission)] shall base the [IR] on that report unless the great weight of the other medical evidence is to the contrary. If the great weight of the other medical evidence contradicts the [IR] contained in the report of the designated doctor chosen by the commission, the commission shall adopt the [IR] of one of the other doctors.

In this case there is no IR of another doctor that can be adopted.

Dr. K, the carrier's RME doctor did examine the claimant on May 6, 2004, but did not certify an MMI date, reference the statutory MMI date, and in fact seemed to indicate that MMI had not been reached. Dr. K concluded that the claimant's 15% IR

was "probably" not accurate and stated "[the IR] was probably a DRE II, 5%, but she certainly has neurologic problems since her surgery."

In this case the designated doctor recited that he had performed a neurologic examination including testing of reflexes and measurements for atrophy, noted tendon reflex decrease, and stated there was objective evidence of radiculopathy present. Dr. K seems to agree that the claimant has neurologic problems since her surgery. The hearing officer did not err in determining that the designated doctor's report had not been overcome by the great weight of contrary medical evidence. In turn we conclude that the hearing officer's determination 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 **TEXAS PROPERTY & CASUALTY INSURANCE GUARANTY ASSOCIATION for Legion Insurance Company, an impaired carrier** and the name and address of its registered agent for service of process is

MARVIN KELLY, EXECUTIVE DIRECTOR
9120 BURNET ROAD
AUSTIN, TEXAS 78758.

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Judy L. S. Barnes
Appeals Judge

_____
Daniel R. Barry
Appeals Judge