

APPEAL NO. 042912-s
FILED JANUARY 10, 2005

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 October 20, 2004. The hearing officer determined that the respondent's (claimant) impairment rating (IR) is 25% as assessed by Dr. G, the designated doctor whose opinion was supported by the great weight of the medical evidence.

The appellant (carrier) appeals, contending that Dr. G had incorrectly rated the compensable injury using an incorrect table of 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 claimant responded, urging affirmance.

DECISION

Reversed and a new decision rendered.

The parties stipulated that the claimant sustained a compensable injury on _____, that Dr. G was the designated doctor and that the date of maximum medical improvement (MMI) is October 1, 2003. It is undisputed that the claimant, a R.N., sustained a compensable injury in the form of a severe and rare reaction to a small pox vaccination. At a prior CCH, conducted in April 2004, regarding the extent of injury, another hearing officer determined that the compensable injury includes episodic syncope and "meningoencephalitis (and intercranial hypertension to the extent that it is the same as meningoencephalitis)" and that the "compensable injury does not include pericarditis and seizures." Those determinations have apparently not been appealed and have become final.

The designated doctor, in a report dated October 1, 2003, diagnosed various conditions, stated that the claimant "suffers from episodic syncope" and assessed a 25% impairment rating (IR) using Table 5 page 4/143 of the AMA Guides. Table 5 is entitled "Impairments Related to Epilepsy, Seizures, and Convulsive Disorders" and has four categories of impairments of the whole person. The second of the categories has a range of "15-29% Impairment of the whole person." Subsequently by letter dated October 30, 2003, Dr. G was sent other reports for comment. If Dr. G replied to this letter it is not in evidence.

In evidence is a report dated February 25, 2004, from Dr. T, carrier's required medical examination (RME) doctor. Dr. T stated that he disagreed with Dr. G's report "for his global [IR]," that there is no evidence for a seizure disorder and that the claimant has episodic syncopal based on "tilt table documentation of orthostatic hypotension."

Dr. T assessed a 13% IR.¹ The hearing officer in the prior CCH references Dr. T's "persuasive report." Subsequent to the April 2004 CCH, the carrier requested the Texas Workers' Compensation Commission (Commission) to seek further clarification from Dr. G based on the CCH decision that the compensable injury excludes pericarditis and seizures and includes episodic syncope and meningoencephalitis and, therefore, a Table 5 rating for seizures was improper and that Dr. G review Dr. T's report. The Commission, by letter dated June 4, 2004, advised Dr. G of the extent-of-injury determinations in the April 2004 CCH, and asked for clarification regarding the injuries Dr. G had rated. Dr. G replied in an undated and unsigned letter (referencing the Commission's June 4, 2004, letter) stating:

I have no changes to make to my original assessment. The pericarditis is most likely secondary to an immune reaction to the small pox vaccine. The 'seizures' are syncopal episodes due to pseudotumor cerebri which, in my opinion is also due to an immune reaction to the vaccine. Therefore, both these impairments are compensable.

Dr. T testified at the CCH in this case explaining the difference between syncope and seizures. Dr. T testified that a syncope "is a transient impairment of posture of consciousness" while a seizure is "primarily due to abnormal . . . electrical functioning of the brain" and "are two totally different mechanisms," Dr. T asserts that Table 22 page 4/152 should be used to rate the claimant's episodic syncope. Table 22 is entitled "Impairments Related to Syncope or Transient Loss of Awareness." That table has four levels with Level 1 being a mild loss of awareness with a drop in blood pressure of a certain degree. The carrier cites certain references from the Merck Manual to support Dr. T's testimony which is that fainting or syncope is due to a vascular dysfunction while a seizure is a neurologic dysfunction.

Dr. G failed to address why he used Table 5, which relates to seizures and convulsive disorders rather than Table 22 which relates to impairments related to syncope. The prior CCH excluded seizures as part of the compensable injury and specifically included episodic syncope. Table 5 refers to "Paroxysmal disorder" which in Dorland's Illustrated Medical Dictionary, 28th Edition defines Paroxysmal as "a spasm or seizure." Dorland's defines syncope as a fainting or swoon and postural syncope as a fainting or swoon resulting from orthostatic hypotension. (See *also* carrier Exhibit I page 5). As previously noted Dr. T found "episodic syncopal . . . based on tilt table documentation of orthostatic hypotension."

We hold that Dr. G used the incorrect table of the AMA Guides in rating the claimant by using Table 5 dealing with seizures which had been specifically excluded as part of the compensable injury. We are satisfied that there is a difference between seizures and syncope or episodic syncope in that they have different causes. Dr. G

¹ Dr. T assessed an 8% impairment for an impairment of the hyporhalamic-pituitary axis, page 12/266 of the AMA Guides and 5% impairment for episodic syncopal from Table 22. The pituitary aspect of the rating is not disputed and the disputed issue is whether Table 5 or Table 22 should be used to rate episodic syncope.

does not address or explain why he continued to rate the claimant under Table 5 rather than Table 22. This amounts to more than a difference of medical opinion. Accordingly, we hold that the designated doctor failed to correctly apply the AMA Guides and that his opinion is contrary to the great weight of the medical evidence.

Section 408.125(c) provides that the report of the designated doctor shall have presumptive weight, and the Commission shall base the IR on that report unless the great weight of the other medical evidence is to the contrary, and that, if the great weight of the 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 that we have held that Dr. G's report is against the great weight of the medical evidence, we adopt the 13% IR of Dr. T.

We reverse the hearing officer's determination that the claimant's IR is 25% and render a new decision that the claimant's IR is 13%.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Margaret L. Turner
Appeals Judge