

APPEAL NO. 052068
FILED OCTOBER 7, 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 August 9, 2005. With regard to the only issue before him the hearing officer determined that the appellant's (claimant) impairment rating (IR) is 13%.

The claimant appealed, requesting that we reverse the IR because the doctor had failed to perform computerized strength testing. The respondent (carrier) responded, contending that the claimant's appeal was not timely and otherwise urges affirmance.

DECISION

Reversed and remanded.

First addressing the carrier's contention that the claimant's appeal is untimely, using the deemed receipt provisions of 28 TEX. ADMIN. CODE § 102.5(d) (Rule 102.5(d)) (rather than the stated receipt date in the appeal) the claimant's Request for Review is timely.

Secondly, the CD of the CCH is largely inaudible. Section 410.203(a)(1) requires the Appeals Panel to consider the record at the hearing. The CCH was recorded on one CD, which was inaudible. There was no court reporter at the CCH. Accordingly, we remand this case for reconstruction of the record.

In that the Appeals Panel is allowed only one remand (see Section 410.203(c)) we have reviewed the documentary evidence, the hearing officer's decision and the appeal and the response. The parties stipulated that the claimant sustained a compensable (right forearm and hand) injury on _____, that the claimant reached maximum medical improvement on September 9, 2004, and that (Dr. P) is the Texas Department of Insurance, Division of Workers' Compensation (Division)-appointed designated doctor. It appears undisputed that the proper edition of the AMA Guides is the edition 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).

The hearing officer comments in his Background Information section that; The "only arguable error made by [Dr. P] was in assigning an incorrect rating for rotational deformity of the ring finger – he perhaps should have used a multiplier of 40% instead of 20% with the 15-degree rotational deformity. It was probably within his discretion to use the smaller number, but a recalculation of the [IR] using the higher percentage shows that it would have made absolutely no difference in the assigned [IR] of 13%."

The hearing officer is referring to Dr. P's IR Work Sheet, included as part of Dr. P's report dated September 9, 2004. The doctor, in the work sheet stated:

- A. The rotational deformity of the 4th digit was "mild" (15°) – according to Table 22 (p.59) = 20% by 80% for the proximal interphalangeal joint using Table 18 (p.58) the residual final = 16% of the 4th.

- B. The rotational deformity of the 5th digit was "moderate" (25°) which yielded 40% using the same Table. Multiplying 40% by 80% for the IP joint of that digit = 32% of the 5th digit.

Using these determinations yielded a final UE impairment = 16%

Table 22 on page 59 regarding digital rotational deformity states:

Digital rotational deformity	% Digit Impairment †
Mild: less than 15°	20
Moderate: 15° through 30°	40
Severe greater than 30°	60

† Multiply the percent of impairment by the relative value of the digit (Table 18, p.58) to determine the digit rotation deformity impairment percent.

If the claimant actually had a 15° deformity then he would fall into the "Moderate: 15° through 30°" category. We view "less than 15°" to be 14° and less. We agree with the hearing officer that the multiplier should be 40% rather than 20% but disagree that it was within the doctor's "discretion to use the smaller number." We believe the multiplier should be 40% for both the 4th and 5th proximal interphalangeal joints. Using Table 18 page 58 this would result in a 32% digit rotation deformity impairment for each finger. We fail to see how this can result in a 16% UE impairment. The example under Table 18 refers to Table 1 page 18 to convert the digital rating to hand impairment. Likewise page 35 of the Guides instructs on "Determining Impairments of Several Digits" and after calculating the impairment for each digit instructs to use "Table 1 (p. 18) [to] find the hand impairment contributed by each digit." Table 1 under the column for "% Impairment of Ring or little finger" converts a 32% digital impairment to 3% impairment of the hand (for each finger). The instruction on page 35 step 3 then instructs to "Add the hand impairments contributed by each digit to obtain the total hand impairment" (emphasis in the original) (3% + 3% = 6% hand impairment). Step 4 then instructs to use "Table 2 and 3 (pp. 19 and 20)" to convert the hand impairment to an UE. Using Table 2 a 6% hand impairment converts to a 5% UE impairment (as opposed to the 16% UE impairment found by Dr. P). Dr. P rated the elbow at 2% UE and the wrist at 5% UE. Using Figure 1 on page 17, 5% UE impairment for the hand, 5% UE impairment for the wrist and 2% UE impairment for the elbow are combined (see the footnote on page 16) using the Combined Values Chart on page 322 to arrive at a total 12% UE impairment. The 12% UE rating is then converted to a 7% whole person rating using

Table 3 on page 20. It appears to us that Dr. P may have omitted a step in either converting digital impairments to a hand impairment and/or in converting the hand impairment to an UE impairment.

We find no error in the designated doctor's explanation why he did not do computerized grip/strength testing.

We remand the case to the hearing officer for a reconstruction of the record and to make inquiry of Dr. P exactly how he arrived at his IR step by step. The hearing officer is to make Dr. P's response available to the parties for comment and argument. After giving the parties an opportunity to respond the hearing officer will review the record and issue a new decision and order.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Division, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See Appeals Panel Decision 92642, decided January 20, 1993.

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
IRVING, TEXAS 75063.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge