

APPEAL NO. 060949
FILED JUNE 21, 2006

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 April 10, 2006. With regard to the only issue before him the hearing officer determined that the respondent's (claimant) impairment rating (IR) is 57%.

The appellant (carrier) appealed, contending that the designated doctor (who had assessed the 57% IR) had not correctly applied 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 agreeing with the hearing officer's decision.

DECISION

Reversed and a new decision rendered.

The medical records indicated that the claimant, an automobile mechanic, sustained an injury when a foreign body fell into his right eye on _____. The parties stipulated that the claimant sustained a compensable injury on _____, that Dr. T was the designated doctor and that the date of maximum medical improvement (MMI) is August 23, 2004.

The medical records indicate that the claimant suffered a corneal abrasion and developed an infection in his right eye as a result of the compensable injury. In February 2004 the claimant had a corneal graft. Dr. T in a report dated August 23, 2004, certified MMI on that date and assessed a 57% IR. Chapter 8 of the AMA Guides describes how loss of vision is to be assessed. Dr. T assessed a 52% visual acuity loss using Table 3, page 212, and a 12% loss of vision field using Table 5 page 214. (The doctors all agree that there was no abnormal diplopia.) Dr. T combined the 52% visual acuity loss with the 12% loss of vision field to arrive at a 58% loss of visual system. He then combined the 58% with an additional 5% for ocular abnormality or dysfunction (the carrier's required medical examination (RME) doctor agrees that is a discretionary rating pursuant to instructions on page 218 of the Guides) to arrive at a 60% loss of visual system. Dr. T then goes to Table 6 page 218 to convert the loss of visual system to a whole person IR of 57%.

Dr. B the carrier's RME doctor, in a report dated October 20, 2004, reviewed Dr. T's report. Dr. B agreed with the 52% visual system loss, noted a math error in arriving at the loss of vision field and agreed that the 5% ocular abnormality/deformity "is a judgment call . . . acceptable under the [AMA Guides]." Dr. B stated that Dr. T's "most significant error" was that he failed to apply the 60% (or 59% if one counts the math error) to the formula in Table 7 page 219. The formula in Table 7 is entitled "Visual System Impairment for Both Eyes" and requires "3 X impairment value of better eye

[which in this case is $3 \times 0 = 0$] + impairment value of worse eye" which in this case is 60, divided by 4 which would be a 15% impairment of visual system and under Table 6 converts to a 14% whole person IR.

Dr. B's review was sent to Dr. T for comment. Dr. T replied in a report dated November 13, 2004, indicating he had a "typo" error by omitting one of the values in the loss of visual field and with the correction that value is still a 12% loss of vision field. Dr. T however disagreed that Table 7 of the Guides require the doctor to "combine a diseased eye with a normal eye" and that one would "not combine the impairment of a severely damaged knee with the non-involved knee to get the Whole Person impairment for the individual based upon knee injury." Dr. T maintains the only time one uses Table 7 is when there is an injury to both eyes.

Dr. B subsequently examined the claimant, certified the MMI date and assessed a 4% IR. Dr. B had visual acuity testing done by another doctor. In the narrative report dated December 9, 2005, Dr. B assessed an 8% visual system loss, combined with a 6% loss of vision field to arrive at a 14% "right eye impairment" (Dr. T and the AMA Guides call this loss of visual system) which is applied to the formula in Table 7 ($3 \times$ impairment of the better eye, or 0 plus impairment of the worse eye, 14% divided by 4) to equal "a 4% visual system loss . . . [and] per Table 6, a 4% visual system impairment is a 4% whole person [IR]."

The hearing officer indicates that the difference in the ratings constitute a difference of medical opinion. We disagree and believe that the difference is the correct interpretation of the AMA Guides. Subsection 8.4 page 217 lists the steps in determining impairment of the visual system and whole person. Step 1 is to determine the percentage loss of central vision for each eye combining the losses of near and distance vision (52% by Dr. T, 8% by Dr. B). Step 2 is to determine loss of visual field for each eye (12% by Dr. T, 6% by Dr. B). Step 3 is loss of ocular motility, which both doctors agree is 0%. Dr. T assesses an extra 5% for ocular abnormality while Dr. B does not. Both doctors agree that either is permitted. Step 4, after "determining the level of impairment of each eye, use Table 7 (page 219) to determine visual system impairment." Dr. T refuses to follow this step because only one eye was injured. Step 5 is to convert the visual system impairment to a whole person IR.

The carrier cites Appeals Panel Decision (APD) 950131, decided March 10, 1995, which was a factually similar case involving loss of vision of one eye under the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association. We note that Table 5 in the 3rd edition of the Guides is identical to Table 7 of the 4th edition of the Guides. In APD 950131, *supra*, the Appeals Panel, in a case involving loss of vision of one eye, noted that "Table 5 [Table 7 in the 4th ed] indicates that a 50% impairment for one eye with a zero percent impairment for the other eye results in a 13% impairment to the visual system." The Appeals Panel in that case remanded the case to determine the IR. The carrier also points out that the total loss of vision in one eye results in only a 25% visual system impairment and a 24% whole person IR.

The 1989 Act requires that the determination of an IR be based on the applicable edition of the AMA Guides. Section 408.124. Failure by a designated doctor to properly follow the Guides has led to reversal of a decision on an IR based on such a report. APD 022504-s, decided June 9, 2004. In this case we hold that Dr. T failed, and refused, to properly apply subsection 8.4 of the 4th edition of the Guides and that therefore Dr. T's IR is contrary to the preponderance of the other medical evidence. Section 408.125(c) provides that if the preponderance of medical evidence contradicts the IR contained in the report of the designated doctor, the Texas Department of Insurance, Division of Workers' Compensation (Division) shall adopt the IR of one of the doctors. The only other IR which can be adopted is that of Dr. B, the RME doctor, who assessed a 4% IR.

Accordingly, we reverse the hearing officer's decision that the claimant's IR is 57% as being contrary to the preponderance of the evidence and we render a new decision that the claimant's IR is 4% as assessed by Dr. B.

The true corporate name of the insurance carrier is **OLD REPUBLIC INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
701 BRAZOS STREET, SUITE 1050
AUSTIN, TEXAS 78701-3232.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Margaret L. Turner
Appeals Judge