

APPEAL NO. 100111
FILED MARCH 22, 2010

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 January 5, 2010. With regard to the only issue before him, the hearing officer determined that the appellant's (claimant) impairment rating (IR) is 14%.¹

The claimant appealed, contending that the IR should be 16% as assessed by the treating doctor. The respondent (carrier) responded, urging affirmance.

DECISION

Reversed and a new decision rendered.

Section 408.125(c) provides that the report of the designated doctor shall have presumptive weight, and the Texas Department of Insurance, Division of Workers' Compensation (Division) shall base the IR on that report unless the preponderance of the other medical evidence is to the contrary, and that, if the preponderance of the medical evidence contradicts the IR contained in the report of the designated doctor chosen by the Division, the Division shall adopt the IR of one of the other doctors.

It is undisputed that the claimant was a truck driver. It is also undisputed that the claimant sustained a compensable right shoulder injury on _____, and that (Dr. H) was appointed as the designated doctor.

Dr. H, in a Report of Medical Evaluation (DWC-69) dated September 1, 2009, certified the claimant at MMI on that date with a 14% IR 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. H assessed a 14% IR using loss of range of motion (ROM) measurements of the claimant's right shoulder as follows: 30° extension for 1% upper extremity (UE) impairment and 80° flexion for 7% UE impairment using figure 38, page 3/43; 60° abduction for 6% UE impairment and 30° adduction for 1% UE impairment using figure 41, page 3/44; 60° internal rotation for 2% UE impairment and 20° external rotation for 7% UE impairment using figure 44, page 3/45 of the AMA Guides. The 7% UE impairment assigned due to loss of external rotation using figure 44, page 3/45 of the AMA Guides is incorrect. Dr. H measured 20° of external rotation of the right shoulder and using figure 44, page 3/45 assigned a 7% UE impairment. However, Dr. H misread the AMA Guides because 20° of external rotation in figure 44, page 3/45 is only 1% UE impairment, instead of the 7% UE impairment Dr. H

¹ The parties agreed on the record that the claimant reached maximum medical improvement (MMI) on September 1, 2009. The benefit review conference report also reflects this agreement.

assessed.² Dr. H assessed a 24% (1+7+6+1+2+7) UE impairment which he converted to a 14% IR using Table 3, page 3/20. If the correct loss of ROM for 20° of external rotation is used the claimant only had a total 18% (1+7+6+1+2+1) UE impairment which converts to an 11% IR using Table 3, page 3/20. Dr. H's 14% IR is incorrect because of the clerical error misreading figure 44, page 3/45 of the AMA Guides and the hearing officer erred by adopting Dr. H's 14% IR assessment.

The Appeals Panel has held that a mathematical correction to a certification of an IR may be made when doing so simply corrects an obvious mathematical error and does not involve the exercise of judgment as to what the proper figures were. Appeals Panel Decision (APD) 000028, decided February 22, 2000; APD 011597, decided September 7, 2001. We view Dr. H's misreading of the AMA Guides 20° of external rotation in figure 44, page 3/45 as being in the nature of a mathematical or clerical error, and that the correct value for 20° of external rotation in figure 44, page 3/45 to be 1% UE impairment instead of 7% UE impairment assigned by Dr. H. We recalculate the claimant's whole body IR by adding the UE impairments, as discussed above, to arrive at a corrected 11% IR.

Dr. R, the treating doctor, in his report of December 1, 2009, certified the agreed upon date of MMI and assigned a 16% IR. Dr. R assessed 16% IR using ROM measurements of the claimant's right shoulder and adding an additional 4.2% UE impairment for motor deficit. As noted above, Section 408.125(c) gives presumptive weight to the designated doctor's report unless the preponderance of the other medical evidence is to the contrary. The hearing officer found that Dr. H's assessed IR is supported by a preponderance of the evidence, therefore impliedly finding the preponderance of the other medical evidence was not contrary to Dr. H's report. After applying the mathematical/clerical correction to Dr. H's report the hearing officer's finding is supported by sufficient evidence.

We reverse the hearing officer's determination that the claimant's IR is 14% as assessed by Dr. H and render a new decision that the claimant's IR is 11% applying a mathematical/clerical correction to Dr. H's assessment.

² Dr. H's error was pointed out by (Dr. R), the treating doctor, both in his testimony at the CCH and in his report of December 1, 2009.

The true corporate name of the insurance carrier is **HARTFORD UNDERWRITERS 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.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge