

APPEAL NO. 100264  
FILED MAY 12, 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 was held on January 26, 2010. The hearing officer resolved the sole issue by deciding that the respondent/cross-appellant's (claimant) impairment rating (IR) is 3%. The appellant/cross-respondent (self-insured) filed a "Motion for Decision Nunc Pro Tunc" arguing that the decision of the hearing officer contains a clerical error and the claimant's IR is 2%. The claimant did not respond to the filing of the self-insured's motion, but did file a timely appeal of the hearing officer's determination of the claimant's IR. The claimant contends that the designated doctor's assignment of the IR as determined by the hearing officer did not comply with 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) and is against the preponderance of the evidence. The claimant contends that the claimant's proper IR is 9%. The self-insured responded, contending that the claimant's IR is 2%.

DECISION

Reversed and remanded.

The parties stipulated that the claimant sustained a compensable injury on \_\_\_\_\_, and that he reached maximum medical improvement (MMI) on September 30, 2009. The medical records reflect that the claimant sustained a left wrist injury while in the course and scope of his employment and that he had surgery on May 12, 2009, to repair a rupture of the triangular fibrocartilage complex.

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. 28 TEX. ADMIN. CODE § 130.1(c)(3) (Rule 130.1(c)(3)) provides that the assignment of an IR for the current compensable injury shall be based on the injured employee's condition as of the MMI date considering the medical record and the certifying examination.

On September 30, 2009, (Dr. B), a doctor selected to act in place of the treating doctor, examined the claimant to certify MMI and assign an IR. Dr. B certified that the claimant reached MMI on September 30, 2009, with a 9% IR based on range of motion (ROM) measurements of the claimant's left wrist. The Division appointed a designated doctor, (Dr. M) and he examined the claimant on November 9, 2009, and certified that

the claimant reached MMI on September 30, 2009, with a 2% IR. Dr. M also assessed the claimant's impairment on loss of ROM of the left wrist. In the Background Information portion of her decision and order, the hearing officer stated "the designated doctor provided a thorough report and documented his reasons as to why and how he arrived at the assigned [3%]. The designated doctor's assigned [IR] is supported by the preponderance of the evidence." The hearing officer determined that the claimant's IR is 3%.

Dr. M, the designated doctor, noted in his narrative report that ROM of the claimant's left wrist would be measured by a certified technician. His narrative report includes the specific ROM measurements of the claimant's left wrist, noting that the ROM deficits resulted in a 3% upper extremity (UE) impairment which converted to a 2% whole person impairment. Dr. M assigned a 2% IR for the claimant, not the 3% as determined by the hearing officer. Dr. M noted the following ROM measurements in his narrative:

maximum flexion measured 50°, yielding 2% impairment;  
maximum extension measured 64°, yielding 0% impairment;  
maximum radial deviation measured 22°, yielding 0% impairment; and  
maximum ulnar deviation measured 25°, yielding 1% impairment.

The 1% UE impairment assessed for ulnar deviation was specifically assigned for the measurement of 25°. The ROM measurements were then added resulting in 3% UE impairment and then converted to a 2% whole person impairment. On page 3/37 of the AMA Guides the directions for rating radial and ulnar deviation measurements must be rounded to the nearest 10°. However, Figure 29 on page 3/38, which is used to rate impairment based upon these measurements, uses increments of 5°. This conflict is resolved by looking to the general directions of interpolating, measuring, and rounding off which are found on page 2/9 of the AMA Guides and which provide as follows in relevant part:

In general, an impairment value that falls between those appearing in a table or figure of the *Guides* may be adjusted or interpolated to be proportional to the interval of the table or figure involved, unless the book gives other directions.

Here the AMA Guides do give other directions than applying the values given in Figure 29 on page 3/38. Those directions provide that the measurements be rounded to the nearest 10°. Using the language cited above from page 2/9 of the AMA Guides, these directions control over Figure 29 and should have been applied in calculating the claimant's IR. See Appeals Panel Decision (APD) 022504-s, decided November 12, 2002. Because the designated doctor did not properly apply the AMA Guides in assessing the claimant's IR, we must reverse the decision of the hearing officer adopting the designated doctor's IR.

In evidence is another certification of MMI/IR from Dr. B. In his narrative, Dr. B noted the following ROM measurements of the claimant's left wrist:

flexion was measured 30° which is 5% impairment;  
extension was measured 45° which is 3% impairment;  
ulnar deviation was measured 10° which is 5% impairment; and  
radial deviation was measured 10° which is 2% impairment.

Those measurements were added to a total of 15% UE impairment , which was then converted to 9% whole person impairment.

In evidence was correspondence from a peer review doctor who reviewed Dr. B's narrative report and correctly noted that values are to be rounded to the nearest 10° and noting that the ROM figures for extension had not been rounded to the nearest 10°. On page 3/36 of the AMA Guides the directions for rating flexion and extension of the wrist, the measurements are to be rounded to the nearest 10°. Further, Figure 26 on page 3/36, which is used to rate impairment based upon these measurements, does not provide a specific impairment for 45° but rather provides impairment due to the loss of extension of 50° would be 2% UE impairment and impairment due to the loss of extension of 40° would be 4%. Therefore, Dr. B did not properly calculate the claimant's left wrist extension under Figure 26 because he failed to properly round the extension ROM to the nearest 10°. Accordingly, we cannot adopt Dr. B's assigned 9% IR.

We remand the case to the hearing officer and direct her to seek an opinion from the designated doctor consistent with the holding in this case. The hearing officer is to determine if Dr. M is still qualified and available to be the designated doctor. If Dr. M is no longer qualified or available to serve as the designated doctor then another designated doctor is to be appointed pursuant to Rule 126.7(h) to determine the claimant's IR for the compensable injury as of the stipulated date of MMI of September 30, 2009. The parties are to be provided with the hearing officer's letter to the designated doctor and the designated doctor's response and to be allowed an opportunity to present evidence and respond. The hearing officer is then to make a determination on the claimant's IR for the \_\_\_\_\_, compensable injury as of the MMI date of September 30, 2009.

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 APD 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**HONORABLE AC  
COUNTY JUDGE  
(ADDRESS)  
(CITY), TEXAS (ZIP CODE).**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Veronica L. Ruberto  
Appeals Judge