

APPEAL NO. 101734
FILED JANUARY 27, 2011

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 October 21, 2010. With regard to the only issue before her the hearing officer determined that the respondent's (claimant) impairment rating (IR) is 16% as certified by (Dr. H), the treating doctor.

The appellant (carrier) appealed, contending that the designated doctor's report had presumptive weight and the IR should be 5% as assessed by (Dr. A), the designated doctor. The file does not contain a response from the claimant.

DECISION

Reversed and remanded.

The parties stipulated that the claimant sustained a compensable injury on _____. The medical records in evidence reflect that the claimant sustained a right crush injury to his hand, worse on his (right) thumb. The benefit review conference report reflects that the parties agreed that the claimant reached maximum medical improvement (MMI) on August 6, 2009.

The hearing officer determined that the claimant had a 16% IR as certified by Dr. H, the treating doctor. However, Dr. H's assessment cannot be adopted because the Report of Medical Evaluation (DWC-69) is not signed. 28 TEX. ADMIN. CODE § 130.1(d)(1) (Rule 130.1(d)(1)) provides that a certification of MMI and assignment of an IR for the compensable injury requires the "completion, signing and submission of the [DWC-69] and a narrative report." See Appeals Panel Decision (APD) 100510, decided June 24, 2010. Because the DWC-69 was not signed by Dr. H, it was error for the hearing officer to adopt his certification. Consequently, we reverse the hearing officer's determination that the claimant's IR is 16%.

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.

The designated doctor, Dr. A, in a report dated November 10, 2009, certified MMI on the agreed MMI date of August 6, 2009, and assigned a 5% IR calculated 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. A found 5° abnormal motion in flexion of the interphalangeal (IP) joint of the right thumb for a 7% thumb impairment

using Figure 10, page 3/26 of the AMA Guides. Dr. A also found 5° abnormal motion in extension which was rated at 0%. The AMA Guides on page 2/9 discussing interpolating and rounding states:

In general, an impairment value that falls between those appearing in a table or a 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.

In discussing thumb IP flexion and extension measurements on page 3/25, the AMA Guides instruct “[r]ound the readings to the nearest 10°.” Dr. A improperly interpolated the 5° abnormal motion in flexion to be 7% thumb impairment when the 5° should have been rounded 10° or 0° resulting in either 6% or 8% thumb impairment. The 5° abnormal motion in extension should have been rounded to the nearest 10°.

Dr. A also rates a 30° ankylosis of the Metacarpophalangeal (MP) joint of the right thumb, Figure 13, page 3/27 of the AMA Guides, as 3% thumb impairment. Our review of the AMA Guides indicates 30° ankylosis of the MP joint should be a 6% thumb impairment. Because of the cited errors we hold that Dr. A’s assignment of the 5% whole person IR was not made in accordance with the AMA Guides and therefore is contrary to the preponderance of the medical evidence. Dr. A’s 5% IR may not be adopted.

The only other certification of IR in evidence is that of Dr. H. As previously indicated, Dr. H’s assignment of an IR cannot be adopted because his DWC-69 was not signed as required by Rule 130.1(d)(1). There is no other IR in evidence that can be adopted.

We reverse the hearing officer’s determination that the claimant’s IR is 16% and remand the case to the hearing officer for further action in accordance with this decision.

REMAND INSTRUCTIONS

Dr. A is the appointed designated doctor. On remand the hearing officer is to determine if Dr. A is still qualified and available to be the designated doctor, and if so, the hearing officer is to refer the case back to the designated doctor to correctly apply the AMA Guides rating the compensable injury. If Dr. A is no longer qualified or available to serve as the designated doctor, another designated doctor is to be appointed pursuant to Rule 126.7(h) to determine the IR on the agreed upon August 6, 2009, date of MMI. The parties are to be provided with the hearing officer’s letter to the designated doctor, the designated doctor’s response and are to be allowed an opportunity to respond.

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 **LM INSURANCE CORPORATION** and the name and address of its registered agent for service of process is

**CORPORATION SERVICES COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Cynthia A. Brown
Appeals Judge

Margaret L. Turner
Appeals Judge