

APPEAL NO. 101949
FILED FEBRUARY 22, 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 December 8, 2010. The hearing officer determined that the appellant (claimant) reached maximum medical improvement (MMI) on June 19, 2010, with a 4% impairment rating (IR) as certified by (Dr. W), the designated doctor. The claimant appeals the hearing officer's MMI and IR determinations, contending that Dr. W failed to rate the entire compensable injury and misapplied 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 further contends that the IR should be 10% as assessed by (Dr. B), a doctor selected by the treating doctor to act in the place of the treating doctor as of the MMI date of August 19, 2010. The respondent (self-insured) responds, urging affirmance.

DECISION

Reversed and a new decision rendered.

The parties stipulated that on _____, the claimant sustained a compensable injury in the form of right shoulder impingement and tear, right wrist carpal sprain/strain, right scapholunate tear, and a disc bulge at L4-5. The parties also stipulated that Dr. W was the designated doctor on the issues of MMI and IR.

MMI

The hearing officer's determination that the claimant reached MMI on June 19, 2010, is supported by sufficient evidence and is affirmed.

IR

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.

Dr. W, in a Report of Medical Evaluation (DWC-69) dated June 19, 2010, certified the claimant at clinical MMI on that date and assigned a 4% IR using the AMA Guides. Dr. W assessed a 4% IR based on combining Diagnosis-Related Estimates Lumbosacral Category I: Complaints or Symptoms, with loss of range of motion (ROM) measurements of the claimant's right wrist, shoulder, and elbow, as discussed below.

Dr. W measured 40 degrees of extension of the wrist for 0% upper extremity (UE) and 70 degrees of flexion of the wrist for 0% UE using Figure 26, page 3/36; 30 degrees of ulnar deviation of the wrist for 0% UE and 20 degrees of radial deviation of the wrist for 0% UE using Figure 29, page 3/38. The 0% UE impairment assigned due to loss of extension of the wrist using Figure 26, page 3/36 is incorrect. Dr. W measured 40 degrees of extension of the wrist and using Figure 26 assigned 0% UE impairment. However, Dr. W misread the AMA Guides because 40 degrees of extension in Figure 26, page 3/36 is 4% UE impairment, instead of the 0% UE impairment Dr. W assessed.

Dr. W measured 30 degrees of extension of the shoulder for 0% UE impairment and 140 degrees of flexion of the shoulder for 3% UE impairment using Figure 38, page 3/43; 140 degrees of abduction of the shoulder for 2% UE impairment and 50 degrees of adduction of the shoulder for 0% UE impairment using Figure 41, page 3/44; and 70 degrees of external rotation of the shoulder for 0% UE impairment and 50 degrees of internal rotation of the shoulder for 2% UE impairment using Figure 44, page 3/45. The 0% UE impairment assigned due to loss of extension of the shoulder using Figure 38 is incorrect. Dr. W measured 30 degrees of extension of the shoulder and using Figure 38 assigned a 0% UE impairment. However, Dr. W misread the AMA Guides because 30 degrees of extension in Figure 38 is 1% UE impairment, instead of the 0% UE impairment Dr. W assessed.

Dr. W properly used Figure 32, page 3/40, for his ROM measurements of the claimant's elbow.

Dr. W assessed a 7% (0+0+0+0+3+2+2) UE impairment which he converted to a 4% IR using Table 3, page 3/20. If the correct loss of ROM for 40 degrees of extension of the wrist and 30 degrees of extension of the shoulder is used the claimant had a total 12% (4+0+0+0+4+2+2) UE impairment which converts to a 7% IR using Table 3. Dr. W's 4% IR is incorrect because of the clerical error misreading Figure 26, page 3/36, and Figure 38, page 3/43 of the AMA Guides, and the hearing officer erred by adopting Dr. W's 4% 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 100111, decided March 22, 2010. We view Dr. W's misreading of the AMA Guides 40 degrees of extension of the wrist in Figure 26, page 3/36, and 30 degrees of extension of the shoulder in Figure 38, page 4/43 as being in the nature of a mathematical or clerical error, and that the correct value for 40 degrees of extension of the wrist in Figure 26 to be 4% UE impairment instead of 0% impairment and that the correct value for 30 degrees of extension of the shoulder in Figure 38 to be 1% UE impairment instead of 0% UE impairment assigned by Dr. W. We recalculate the claimant's whole body IR by adding the additional 5% UE impairments, as discussed above, to arrive at a corrected 7% IR.

There is one other certification in evidence, that of Dr. B. Dr. B certified the claimant reached clinical MMI on August 19, 2010, and assigned a 10% IR. 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 the preponderance of the medical evidence is not contrary to Dr. W's report and it has presumptive weight. Although the claimant contended that Dr. W failed to rate the entire compensable injury, a review of the record reveals that Dr. W considered all of the medical records before him, and that the difference between Dr. W's and Dr. B's ratings was merely a difference of medical opinion. After applying the mathematical/clerical correction to Dr. W's report, the hearing officer's finding that the preponderance of the medical evidence is not contrary to Dr. W's report and it has presumptive weight is supported by sufficient evidence. Furthermore, we note that Dr. B certified the claimant reached MMI on a date other than June 19, 2010. Given that we have affirmed the hearing officer's determination that the claimant reached MMI on June 19, 2010, and as Dr. B's IR is based upon a different MMI date, Dr. B's certification cannot be adopted.

We reverse the hearing officer's determination that the claimant's IR is 4% as assessed by Dr. W and render a new decision that the claimant's IR is 7% applying a mathematical/clerical correction to Dr. W's assessment.

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

For service in person the address is:

**JONATHAN BOW, EXECUTIVE DIRECTOR
STATE OFFICE OF RISK MANAGEMENT
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Carisa Space-Beam
Appeals Judge

CONCUR:

Cynthia A. Brown
Appeals Judge

Thomas A. Knapp
Appeals Judge