

APPEAL NO. 110267
FILED APRIL 19, 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 commenced on December 1, 2010, and the record was closed on January 31, 2011. The hearing officer determined that pursuant to the parties' stipulation the appellant (claimant) reached maximum medical improvement (MMI) statutorily on March 6, 2010, and that the claimant's impairment rating (IR) is 7% "per [(Dr. B)'s] report."

The claimant appealed, contending that Dr. B, the designated doctor, did not rate the entire compensable injury. The file does not contain a response from the respondent (carrier).

DECISION

Reversed and rendered.

The parties stipulated that: the claimant sustained a compensable right shoulder and right thumb injury on _____; Dr. B is the designated doctor on the issues of MMI and IR; and that the claimant reached MMI statutorily on March 6, 2010, per the reports of the designated doctor, Dr. B, and the treating doctor, (Dr. E).

Dr. B initially examined the claimant on February 19, 2009, and certified that the claimant was not at MMI. In his report of February 19, 2009, Dr. B noted that the claimant "has had two surgeries to his right thumb." Dr. B further noted that the right thumb "has completely healed" and had a normal physical exam. Dr. B found the claimant not at MMI because the claimant's right shoulder was to be examined by an independent medical reviewer and that an MRI should be performed on the right shoulder with the results to be sent to Dr. B. Dr. B commented on the extent of injury that the claimant "had an injury to his right thumb as well as his right shoulder."

Subsequently, the claimant was examined by Dr. E on March 26, 2010. Dr. E certified the claimant at MMI on March 6, 2010 (the stipulated MMI date) and assessed an 11% IR. The IR was based on a 15% upper extremity (UE) loss of range of motion (ROM) of the shoulder Figures 41 and 44, pages 44 and 45 of 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 4% UE loss of ROM of the right thumb (Figure 1, page 3/16 of the AMA Guides) converted to an 11% whole person IR (Table 3, page 20 of the AMA Guides).

Dr. B re-examined the claimant on June 1, 2010, and certified the claimant at MMI on March 6, 2010 (the stipulated statutory MMI date) with a 7% IR. Dr. B based the 7% IR on right shoulder loss of ROM and used Figure 1 on page 3/17 of the AMA Guides. Dr. B diagnosed a right shoulder rotator cuff tear. Dr. B makes no reference to

the claimant's right thumb injury in his report nor does he reference any thumb ROM measurements using Figure 1 on page 3/16 of the AMA Guides.

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. 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.

In this case, Dr. B is the designated doctor. In Dr. B's initial report of February 19, 2009, Dr. B recognized that the claimant's compensable injury was to the right shoulder and right thumb. Although Dr. B, in that report, noted that the right thumb was completely healed, in assessing an IR he was still required to rate the right thumb even though there may be no permanent impairment. See 28 TEX. ADMIN. CODE § 130.1(c)(3)(D)(i) (Rule 130.1(c)(3)(D)(i)) which requires a description and explanation of specific clinical findings related to each impairment, including 0% IRs. See also Block 18.a of the Report of Medical Evaluation (DWC-69) form in evidence. In this case, Dr. B did not discuss the right thumb in his June 1, 2010, report, does not give ROM measurements of the right thumb in Figure 1-Part 1 on page 3/16 of the AMA Guides and lists only the right shoulder rotator cuff tear as the diagnosis. Rule 130.1(c) provides that the certifying doctor shall assign an IR for the current compensable injury according to the AMA Guides based on the injured employee's condition as of the MMI date considering the medical record and certifying examination. The hearing officer in her Background Information, comments that on June 1, 2010, Dr. B re-examined the claimant and certified "a 7% IR relative only to the right shoulder." Dr. B failed to rate the entire current compensable injury by failing to rate the right thumb injury. The preponderance of the medical evidence contradicts the IR contained in the report of Dr. B.

Dr. E, in his report of March 26, 2010, assigned an IR for both the right shoulder and right thumb which is not contrary to the AMA Guides. We reverse the hearing officer's determination that the claimant's IR is 7% because Dr. B did not rate the entire current compensable injury and we render a new decision that the claimant's IR is 11% as assigned by Dr. E.

The true corporate name of the insurance carrier is **TRUCK INSURANCE EXCHANGE** and the name and address of its registered agent for service of process is

**CHRIS GRANGER
15700 LONG VISTA DRIVE
AUSTIN, TEXAS 78728.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Cynthia A. Brown
Appeals Judge

Margaret L. Turner
Appeals Judge