

APPEAL NO. 111720  
FILED JANUARY 13, 2012

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 4, 2011. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) reached maximum medical improvement (MMI) on January 11, 2011, with an impairment rating (IR) of 50%. The appellant (carrier) appeals the hearing officer's determination of the claimant's IR, contending that the claimant's IR for the right lower extremity (LE) cannot exceed the impairment estimate for the amputation of the LE, 100% LE or 40% whole person IR. The claimant responded, urging affirmance. The hearing officer's determination that the claimant reached MMI on January 11, 2011, was not appealed and has become final pursuant to Section 410.169.

DECISION

Reversed and rendered.

The parties stipulated that the claimant sustained a compensable injury on (date of injury); the Texas Department of Insurance, Division of Workers' Compensation (Division) appointed (Dr. D) as the designated doctor for the issues of MMI and IR; and the claimant reached MMI on January 11, 2011. It is undisputed that Dr. D certified that the claimant reached MMI on January 11, 2011, with 50% IR. The hearing officer found that "[t]he preponderance of the other medical evidence is not contrary to the opinion of the [d]esignated [d]octor." The carrier contends in its appeal that the designated doctor did not follow the rating criteria 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 Dr. D's IR cannot be adopted. The carrier further contends that the hearing officer erred in not adopting the certification of MMI and IR by (Dr. M), a post-designated doctor required medical examination (RME) doctor.

The medical records in evidence reflect that on (date of injury), the claimant hit his right knee with a hammer while making pallets at work. The records reflect that the claimant has undergone three right knee surgeries for this injury.

Section 408.125(c) provides that the report of the designated doctor shall have presumptive weight, and the 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.

The record indicates that Dr. D, the designated doctor, examined the claimant on January 20, 2011, and certified that the claimant reached MMI on January 11, 2011, with 50% IR, based on placing the claimant in the "[s]evere" category "h",<sup>1</sup> Lower Limb Impairment from Gait Derangement, Table 36, page 3/76, in the AMA Guides. In evidence is a carrier-selected peer review report dated February 3, 2011, by (Dr. O). In that report, Dr. O states:

There are multiple ways to rate this claimant. You can rate him under range of motion, diagnosis specific disorders and traumatic arthritis . . . .

As pointed above, on page 75 of the [AMA Guides], under gait derangement, whenever possible, the evaluator should use the more specified methods of those other parts in estimating impairments. He has several other specific ways to rate this [claimant]. Also the cardinal rule of [t]he AMA Guides is that you do not rate the claimant more than amputation. If you [w]ere to have an amputation at the hip, you only get 40% [IR].

In summary, this rating [by Dr. D] does not follow [t]he [AMA Guides].

On page 3/84, the AMA Guides provide that "[t]he final [LE] impairment must not exceed the impairment estimate for amputation of the extremity, 100%, or 40% whole-person impairment." On page 3/76, Table 36, for gait derangement, provides for whole person impairments beginning from a mild derangement, 7%, continuing through a severe derangement (wheelchair dependent), 80%. However, where a conflict exists between the general directions and the figures in the AMA Guides, the general directions control. See Appeals Panel Decision 022504-s, decided November 12, 2002. We hold that a LE impairment based on gait derangement for an extremity cannot exceed the impairment estimate for amputation of the extremity, which would be 40% whole person impairment. Because the designated doctor's assigned IR did not conform to the rating criteria of the AMA Guides, the 50% IR is contrary to the preponderance of the other medical evidence and cannot be adopted.

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<sup>1</sup> The "[s]evere" category "h" provides that the patient's signs requires routine use of two canes or two crutches and a short leg brace ankle-foot orthosis (AFO).

There is one other certification of MMI and IR in evidence in which Dr. M certified that the claimant reached MMI on January 11, 2011, with 11% IR. Dr. M, the RME doctor, examined the claimant on April 5, 2011. In his report dated April 5, 2011, Dr. M explains his assigned rating of 11%, stating:

I would rate the [claimant] based on Table 64 [page 3/85 of AMA Guides] at 4% whole person for the medial and lateral menisectomy and 7% for the moderate laxity of the anterior cruciate ligament which would be combined to equal 11% whole person impairment . . . .

Because Dr. M followed the rating criteria provided by the AMA Guides, his assigned IR of 11% can be adopted. Therefore, we reverse the hearing officer's determination that the claimant's IR is 50% and render a new decision that the claimant's IR is 11%.

The true corporate name of the insurance carrier is **CONTINENTAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**C T CORPORATION SYSTEM  
350 NORTH ST. PAUL STREET  
DALLAS, TEXAS 75201.**

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Cynthia A. Brown  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Margaret L. Turner  
Appeals Judge