APPEAL NO. 111965
FILED FEBRUARY 24, 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 (CCH) was held on November 14, 2011, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the sole disputed issue by deciding that the appellant's (claimant) impairment rating (IR) is 7%. The claimant appealed, disputing the hearing officer's IR determination, arguing that the hearing officer should have adopted the IR assigned by the designated doctor, [Dr. C]. The respondent (self-insured) responded, urging affirmance of the disputed IR determination and arguing that the claimant's appeal, signed by the ombudsman on behalf of the claimant, is not a timely appeal.

DECISION

Reversed and rendered.

We find no merit in the self-insured's complaints regarding the claimant's timely filing of her appeal.

The parties stipulated that on [date of injury], the claimant sustained a compensable injury; Dr. C is the designated doctor appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division) to address maximum medical improvement (MMI) and IR; and the claimant reached MMI on January 30, 2011, as certified by the designated doctor, Dr. C, and by the post-designated doctor required medical examination (RME) doctor, [Dr. O]. The only two certifications of MMI and IR in evidence are by Dr. C and by Dr. O, who both used 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 hearing officer adopted the 7% IR by Dr. O, the RME doctor.

The evidence reflected that the claimant was diagnosed with bilateral carpal tunnel syndrome (CTS). The claimant testified that she underwent surgery on both wrists in 2010, and had returned to work with permanent restrictions.

The sole issue to be decided at the CCH was the claimant's IR. The self-insured argued at the CCH that Dr. C's 24% IR failed to correctly apply the AMA Guides in assessing impairment for the claimant's bilateral wrists. The hearing officer made findings of fact (appealed by the claimant) that the IR evaluation of Dr. C was not

performed in accordance with the AMA Guides and that the 24% IR by Dr. C is contrary to the preponderance of the other medical evidence.

The AMA Guides provide on page 3/46:

> To evaluate impairment resulting from the effects of peripheral nerve lesions, it is necessary to determine the extent of loss of function due to (1) sensory deficits or pain (Table 11 [page 3/48]); and (2) motor deficits (Table 12 [page 3/49]). Characteristic deformities and manifestations resulting from peripheral nerve lesions, such as restricted motion, atrophy, and vasomotor, trophic, and reflex changes, have been taken into consideration in preparing the estimated impairment percents shown in this section.
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> *If an impairment results strictly from a peripheral nerve lesion, the physician should not apply impairment percents from Sections 3.1f through 3.1j ([pages 3/24 through 3/45]) of this chapter [Figures 26 and 29 included],* and *this section [3.1k Impairment of the upper extremity (UE) Due to Peripheral Nerve Disorders (Table 16 included)], because a duplication and an unwarranted increase in the impairment percent would result.*
>
> If restricted motion cannot be attributed to a peripheral nerve lesion, the motion impairment should be evaluated according to Sections 3.1f through 3.1j and the nerve impairment according to this section [3.1k]. Then the motion impairment percent should be *combined* (Combined Values Chart [CVC] [page] 322) with the peripheral nerve system impairment percent.

The AMA Guides further provide in Section 3.1k, Entrapment Neuropathy, on page 3/56:

> Impairment of the hand and [UE] secondary to entrapment neuropathy may be derived by measuring the sensory and motor deficits as described in preceding parts of this section.
>
> An alternative method is provided in Table 16 [page 3/57]. The evaluator *should not* use both methods. Impairment of the [UE] secondary to an entrapment neuropathy is estimated according to the severity of involvement of each major nerve at each entrapment site.

Although the medical records indicate that Dr. C based his assessment of impairment for the claimant's bilateral wrists on the diagnosis of "mild carpal tunnel median nerve injury at the wrist," Dr. C assessed an impairment for abnormal motion of each wrist under Section 3.1h Wrist, page 3/35, and then combined that rating with an impairment he assessed for each wrist under Table 16 (under Section 3.1k Impairment of the UE Due to Peripheral Nerve Disorders) based on mild impairment of the median nerve of the wrist. Dr. C then combined the impairment of the whole person (WP) of the right wrist and impairment of the WP of the left wrist using CVC. The narrative report of Dr. C, dated August 19, 2011, and attached to his Report of Medical Evaluation (DWC-69), does not state whether or not the impairment for each wrist resulted strictly from a peripheral nerve lesion.

In the Background Information section of his decision, the hearing officer noted that Dr. C's IR is invalid according to the AMA Guides and that loss of range of motion (ROM) and peripheral nerve involvement cannot be combined to obtain a rating for CTS without a distinct lesion of some sort causing the ROM loss, separate from the nerve involvement. We agree. Therefore, the hearing officer's findings of fact are supported by the evidence, and Dr. C's IR cannot be adopted.

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. The only other IR in evidence is that from Dr. O.

Dr. O, the RME doctor examined the claimant on September 22, 2011, and assigned a 7% IR for the claimant's bilateral wrist injuries as of the stipulated January 30, 2011, MMI date. The hearing officer made findings of fact (appealed by the claimant) that the IR evaluation by Dr. O was performed in accordance with the AMA Guides and the 7% IR is supported by a preponderance of the other medical evidence.

Dr. O calculated 4% UE impairment for the loss of motion of the right wrist: 50° flexion (2% impairment) + 50° extension (2% impairment) resulting in 4% impairment; 20° radial deviation (0% impairment) + 30° (ulnar deviation (0% impairment) resulting in 0% impairment; then 4% impairment added to 0% impairment results in 4% UE impairment for the right wrist. (Figures 26 and 29). However, contrary to the instructions provided by the AMA Guide, Dr. O did not convert the 4% UE impairment of the right wrist to impairment of the WP using Table 3. Under Table 3, 4% UE impairment converts to 2% WP impairment.

Dr. O then calculated 7% UE impairment for the loss of motion of the left wrist: 40° flexion (3% impairment) + 40° extension (4% impairment) resulting in 7% impairment; 20° radial deviation (0% impairment) + 30° (ulnar deviation (0% impairment) resulting in 0% impairment; then 7% impairment added to 0% impairment results in 7% UE impairment for the left wrist. (Figures 26 and 29). However, contrary to the instructions provided by the AMA Guide, Dr. O did not convert the 7% UE impairment of the left wrist to impairment of the WP under Table 3. Under Table 3, 7% UE impairment converts to 4% WP IR.

According to the provisions of the AMA Guides, with both limbs involved, Dr. O must calculate the impairments of the WP for each limb separately and then combine the percents using the CVC. Dr. O combined the UE impairment percents using the CVC (7% UE with 4% UE), which resulted in 11% UE impairment which he then converted to 7% WP IR using Table 3.

We have previously stated that, where the certifying doctor's report provides the component parts of the rating that are to be combined and the act of combining those numbers is a mathematical correction which does not involve medical judgment or discretion, the Appeals Panel can recalculate the correct IR from the figures provided in the certifying doctor's report and render a new decision as to the correct IR. *See* Appeals Panel Decision (APD) 041413, decided July 30, 2004; APD 100111, decided March 22, 2010; and APD 101949, decided February 22, 2011.

Under the guidance of those cases and according to the provisions of the AMA Guides, we note that Dr. O must combine 4% impairment of the WP for the left wrist with the 2% impairment of the WP for the right wrist, using the CVC, which results in 6% impairment of the WP for the claimant's bilateral UEs rather than the 7% WP IR assigned by Dr. O. Accordingly, we reverse the hearing officer's decision that the claimant has a 7% IR and we render a decision that the claimant's IR is 6%.

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

CT CORPORATION SYSTEM
350 NORTH ST. PAUL
DALLAS, TEXAS 75201.

Cynthia A. Brown
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Margaret L. Turner
Appeals Judge