

APPEAL NO. 120915  
FILED JULY 9, 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 April 18, 2012, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) reached maximum medical improvement (MMI) on August 28, 2011, and that the claimant's impairment rating (IR) is zero percent. The claimant appealed, disputing the hearing officer's determinations of MMI and IR. The respondent (carrier) responded, urging affirmance of the disputed MMI and IR determinations.

DECISION

Reversed and rendered.

The parties stipulated that: (1) on [date of injury], the claimant sustained a compensable injury in the form of bilateral carpal tunnel syndrome (CTS) and a right elbow injury; (2) the designated doctor, [Dr. A] was appointed to determine MMI, IR, and return to work; and (3) the referral doctor, [Dr. K] determined that the claimant had not yet reached MMI. We note that the hearing officer's decision states that the parties stipulated that Dr. A determined that the claimant reached MMI on August 28, 2011, with an IR of zero percent and that the claimant could return to full duty. A review of the record reflects that the parties actually stipulated that Dr. A determined that the claimant reached MMI on July 28, 2011, with an IR of zero percent and that the claimant could return to full duty. The only certification in evidence from Dr. A certifies that the claimant reached MMI on July 28, 2011, not August 28, 2011, as determined by the hearing officer.

Section 401.011(30)(A) defines MMI as "the earliest date after which, based on reasonable medical probability, further material recovery from or lasting improvement to an injury can no longer reasonably be anticipated." Section 408.1225(c) provides that the report of the designated doctor has presumptive weight, and the Texas Department of Insurance, Division of Workers' Compensation (Division) shall base its determination of whether the employee has reached MMI on the report of the designated doctor unless the preponderance of the other medical evidence is to the contrary. 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.

Dr. A, the designated doctor, examined the claimant on July 28, 2011. In his narrative report, Dr. A reported the range of motion (ROM) measurements taken on that date of the claimant's right and left elbows, forearms, and wrists. After recording the ROM measurements for the claimant's right and left wrists, Dr. A noted the following: "[n]ote [sic] expected to be permanent; lack clinical correlation." Dr. A noted that a neurological examination was performed and resulted in zero percent whole person impairment with regard to strength and sensation. Dr. A stated "[i]t is not likely [CTS] due to the job."

Dr. A specifically referenced the figures in 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) that he utilized in assigning impairment. The ROM measurements provided in Dr. A's report for the right elbow flexion and extension were as follows: flexion 140° and extension 0° and would be assigned zero percent impairment based on the measurements taken. However, the ROM measurement contained in Dr. A's report for the claimant's right elbow pronation was 70° and using Figure 35, page 3/41 of the AMA Guides, the impairment assessed should be one percent upper extremity (UE) impairment rather than the zero percent assessed by Dr. A. Dr. A documented 80° for ROM of the right elbow supination which results in zero percent impairment. The ROM measurements contained in Dr. A's report regarding the claimant's left elbow correctly reflect an assessment of zero percent as noted by Dr. A and were as follows: flexion 140°, extension 0°, pronation 80°, and supination 80°.

The ROM measurements contained in Dr. A's narrative for the right wrist when measuring flexion is 30°. Dr. A assessed zero percent impairment. However, using Figure 26, page 3/36 of the AMA Guides, 30° of flexion results in UE impairment of five percent. The ROM measurements contained in Dr. A's narrative for the right wrist when measuring extension is 25°. Dr. A assessed zero percent impairment. However, using Figure 26, page 3/36 of the AMA Guides, 25° would result in UE impairment of five percent or seven percent, depending upon how the measurement was rounded to the nearest 10° as required by the AMA Guides. The ROM measurements contained in Dr. A's narrative for the right wrist when measuring radial deviation is 10°. Dr. A assessed zero percent impairment. However, using Figure 29, page 3/38 of the AMA Guides, 10° would result in UE impairment of two percent. The ROM measurements contained in Dr. A's narrative for the right wrist when measuring ulnar deviation is 12°. Dr. A assessed zero percent impairment. However, using Figure 29, page 3/38 of the AMA Guides, 12° would result in UE impairment of four percent. Impairments of flexion,

extension, radial and ulnar deviation are added to determine the impairment of the UE and then converted to impairment of the whole person using Table 3.<sup>1</sup>

The ROM measurements contained in Dr. A's narrative for the left wrist when measuring flexion is 50°. Dr. A assessed zero percent impairment. However, using Figure 26, page 3/36 of the AMA Guides, 50° of flexion results in UE impairment of two percent. The ROM measurements contained in Dr. A's narrative for the left wrist when measuring extension is 45°. Dr. A assessed zero percent impairment. However, using Figure 26, page 3/36 of the AMA Guides, 25° would result in UE impairment of four percent or two percent, depending upon how the measurement was rounded to the nearest 10° as required by the AMA Guides. The ROM measurements contained in Dr. A's narrative for the left wrist when measuring radial deviation is 15°. Dr. A assessed zero percent impairment. However, using Figure 29, page 3/38 of the AMA Guides, 15° could result in UE impairment of zero percent or two percent depending upon how the measurement was rounded to the nearest 10° as required by the AMA Guides. See Appeals Panel Decision 022504-s, decided November 12, 2002. The ROM measurements contained in Dr. A's narrative for the left wrist when measuring ulnar deviation is 20°. Dr. A assessed zero percent impairment. However, using Figure 29, page 3/38 of the AMA Guides, 20° would result in UE impairment of two percent. Impairment values for the loss of each type of motion of the elbow are added to determine the impairment of the UE and then converted to impairment of the whole person using Table 3.

Dr. A did not state in his narrative report that he invalidated the ROM measurements taken but rather indicated the appropriate figures in the AMA Guides when applied to the measurements taken resulted in zero percent impairment. Dr. A additionally opined that the claimant's CTS was not due to her job.

Dr. A noted in his narrative report that requests for psychotherapy, work hardening, and chronic pain management have all been denied. Dr. A noted that a full physical examination with ROM was performed and resulted in zero percent impairment and concluded that the claimant was at MMI. However, the ROM measurements obtained by Dr. A would result in impairment being assessed. The hearing officer found that Dr. A's assigned IR and MMI date are supported by a preponderance of the evidence. However, Dr. A's certification that the claimant was at MMI was based in part on his incorrect conclusion that the claimant's ROM measurements resulted in zero percent impairment. Dr. K, the referral doctor, noted that additional treatment had been recommended but not yet carried out as discussed below. The preponderance of the other medical evidence is contrary to the designated doctor's determination that the

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<sup>1</sup> The AMA Guides provide that if both limbs are involved, calculate the whole person impairment for each on a separate chart and combine the percents (Combined Values Chart).

claimant reached MMI on July 28, 2011, and that the claimant's IR is zero percent. As previously noted, the hearing officer determined that the claimant reached MMI on August 28, 2011. There is not a certification from any doctor that certified the claimant reached MMI on August 28, 2011. Accordingly, we reverse the hearing officer's determination that the claimant reached MMI on August 28, 2011, and that the claimant's IR is zero percent.

The only other certification in evidence is the one from Dr. K. Dr. K examined the claimant on February 22, 2012, and certified that the claimant had not yet reached MMI. Dr. K measured the claimant's ROM for her left and right wrist and elbow and those measurements indicate an improvement in the measurements taken earlier during the examination of the designated doctor. The claimant testified that she had been performing home exercises and that her symptoms have improved. In explanation of his certification, Dr. K stated that the claimant was still symptomatic and was under active care and evaluation and that her treating doctors had recommended additional clinical studies and/or treatments that have not been done yet. Dr. K recommended that the claimant be referred for a psychological/behavioral evaluation by a mental health provider knowledgeable about chronic pain. He also recommended an MRI. Dr. K estimated that the claimant would reach MMI three months from the date of his examination or upon completion of further treatment recommendations. Accordingly, we reverse the hearing officer's determination that the claimant reached MMI on August 28, 2011, with a zero percent IR and render a new decision that the claimant has not reached MMI and therefore the IR issue is premature.

The true corporate name of the insurance carrier is **LIBERTY MUTUAL FIRE INSURANCE COMPANY** 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.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Cynthia A. Brown  
Appeals Judge

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Carisa Space-Beam  
Appeals Judge