

APPEAL NO. 140812  
FILED JUNE 23, 2014

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 March 17, 2014, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the sole disputed issue by deciding that the respondent's (claimant) impairment rating (IR) is 15%. The appellant (carrier) appeals the hearing officer's determination of the claimant's IR, contending that the designated doctor's range of motion (ROM) measurements do not match the clinical records that are closer in time to the date of maximum medical improvement (MMI) and that the designated doctor 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 appeal file does not contain a response from the claimant.

DECISION

Reversed and rendered.

The parties stipulated that: (1) on [date of injury], the claimant sustained a compensable injury; (2) [Dr. W] was appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division) for the issues of MMI and IR; and (3) the claimant reached MMI on March 6, 2013.

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 the designated doctor examined the claimant on July 9, 2013, and certified that the claimant reached MMI on March 6, 2013, with a 15% IR, using the AMA Guides. Dr. W assessed 0% impairment for the claimant's cervical spine, placing the claimant in Cervicothoracic Diagnosis-Related Estimate (DRE) Category I. Dr. W invalidated the ROM measurements for the claimant's right knee and assessed 0% impairment. Dr. W assessed 5% for the claimant's lumbar spine, placing the claimant in Lumbosacral DRE Category II. Dr. W correctly assessed 2% upper

extremity impairment for loss of ROM for the claimant's right elbow using Figures 32 on page 3/40 and 35 on page 3/41 of the AMA Guides.

Dr. W noted the following ROM measurements for the claimant's right shoulder: 80° for flexion; 30° for extension; 40° for abduction; 30° for adduction; 45° for external rotation; and 60° for internal rotation. According to the AMA Guides, the impairment assessed by Dr. W for flexion, extension, abduction and adduction is correct. However, the impairment assessed for external rotation and internal rotation is incorrect. The AMA Guides provide that when assessing impairment based on ROM for the internal and external rotation of the shoulder you are to round the figures to the nearest 10°. Dr. W recorded the loss of ROM for external rotation as 45° and assessed 2% upper extremity impairment. However, rounding to nearest degree according to Figure 44 on page 3/45 of the AMA Guides would result in 1% impairment both if you rounded up to 50° or down to 40°. Dr. W recorded the loss of ROM for internal rotation as 60° and assessed 0% impairment. However, according to Figure 44 on page 3/45 of the AMA Guides loss of ROM for internal rotation of 60° results in 2% upper extremity impairment.

With the correct assigned impairments for the right shoulder, the right shoulder impairment is calculated by adding: flexion (7%); extension (1%); abduction (6%); adduction (1%); external rotation (1%); and internal rotation (2%) which results in 18% upper extremity impairment rather than the 17% upper extremity impairment assessed by Dr. W.

The Appeals Panel has 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 facts of this case, we consider Dr. W's error a mathematical error that can be corrected without the exercise of medical judgment. Combining 18% upper extremity impairment for the right shoulder with 2% upper extremity impairment for the right elbow results in 20% upper extremity impairment rather than the 19% upper extremity impairment assessed by Dr. W. Using Table 3 on page 3/20 of the AMA Guides, 20% upper extremity impairment converts to 12% whole person impairment. Combining 12% whole person impairment with 5% whole person impairment assessed for the lumbar spine and 0% whole person impairment assessed for the cervical spine and right knee results in 16% impairment rather than the 15% assessed by Dr. W.

The hearing officer found that the preponderance of the other medical evidence is not contrary to Dr. W's opinion on MMI and IR and after a mathematical correction, that finding is supported by the evidence. Accordingly, we reverse the hearing officer's determination that the claimant's IR is 15% and we render a new decision that the claimant's IR is 16%.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MR. RICHARD GERGASKO, PRESIDENT  
6210 HIGHWAY 290 EAST  
AUSTIN, TEXAS 78723.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Veronica L. Ruberto  
Appeals Judge

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Carisa Space-Beam  
Appeals Judge