APPEAL NO. 150931
FILED JULY 13, 2015

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 April 13, 2015, in Fort Worth, Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issue by deciding that the appellant's (claimant) impairment rating (IR) is zero percent. The claimant appealed, disputing the hearing officer's determination of IR. The claimant contends that the IR assigned by the designated doctor is correct. The respondent (self-insured) responded, urging affirmance of the disputed IR determination.

DECISION

Affirmed.

Section 410.203(b) was amended effective September 1, 2011, to allow the Appeals Panel to affirm the decision of a hearing officer as prescribed in Section 410.204(a-1). Section 410.204(a) provides, in part, that the Appeals Panel may issue a written decision on an affirmed case as described in subsection (a-1). Subsection (a-1) provides that the Appeals Panel may only issue a written decision in a case in which the panel affirms the decision of a hearing officer if the case: (1) is a case of first impression; (2) involves a recent change in law; or (3) involves errors at the CCH that require correction but do not affect the outcome of the hearing. This is a case involving an error at the CCH that requires correction but does not affect the outcome of the hearing.

The parties stipulated that: (1) on (date of injury), the claimant sustained a compensable injury; (2) the self-insured has accepted a cervical strain/sprain, lumbar strain/sprain, and bilateral shoulder strain/sprain as the compensable injury of (date of injury); and (3) the claimant reached maximum medical improvement (MMI) on March 13, 2014, pursuant to the opinion of (Dr. M), the designated doctor, and (Dr. Ma), the post-designated doctor required medical examination (RME) doctor. The medical records in evidence reflect that the claimant was injured when she slipped and fell on ice in the parking lot.

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, 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.

There were only two IR's in evidence. One from the designated doctor, Dr. M and one from the RME, Dr. Ma. The hearing officer found that the preponderance of the other medical evidence is contrary to the opinion of Dr. M, the designated doctor and that the IR assigned by Dr. Ma, the RME doctor is supported by a preponderance of the evidence. These findings are supported by sufficient evidence and are affirmed. However, in his discussion the hearing officer stated in part that the designated doctor, Dr. M, inappropriately converted the upper extremity impairment for each shoulder to whole person separately rather than combining the impairment for the two shoulders to obtain an upper extremity regional impairment prior to converting to whole person.

However, 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) provide on page 3/66 that when both upper extremities are involved, derive the whole person impairment percent for each and then combine both values using the Combined Values Chart. We note these same instructions, if both limbs are involved, are contained in the upper extremity worksheets, page 3/17. *See also* Appeals Panel Decision 120255, decided April 2, 2012. The hearing officer incorrectly stated that Dr. M inappropriately converted the upper extremity impairment for each shoulder to whole person separately rather than combining the impairment for the two shoulders to obtain an upper extremity regional impairment prior to converting to whole person.

However, the hearing officer was additionally persuaded that the range of motion values of the bilateral shoulder injury by the designated doctor, Dr. M, were inconsistent with the other medical evidence. There is some evidence to support inconsistent range of motion measurements.

The hearing officer's determination that the claimant's IR is zero percent is affirmed.

The true corporate name of the insurance carrier is **CITY OF FORT WORTH (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

MARY J. KAYSER, CITY SECRETARY
1000 THROCKMORTON
FORT WORTH, TEXAS 76102.

Margaret L. Turner
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Carisa Space-Beam
Appeals Judge