

APPEAL NO. 152464  
FILED FEBRUARY 17, 2016

This appeal after remand arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). The previous hearing resulting in Appeals Panel Decision (APD) 142126, decided December 19, 2014, was remanded on the issues of maximum medical improvement (MMI) and impairment rating (IR). A contested case hearing was held on July 28, 2015, with the record closing on November 10, 2015,<sup>1</sup> in (city), Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issues by deciding the appellant (claimant) reached MMI on November 17, 2014, with an IR of 12%.

The claimant appealed, disputing the hearing officer's determinations of MMI and IR, arguing that the hearing officer abused his discretion when he ordered the appointment of a new designated doctor. The claimant further contends that the new designated doctor, (Dr. C), whose certification the hearing officer adopted, made an error in the calculations of the IR and did not properly apply 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 respondent (self-insured) responded, urging affirmance of the disputed MMI and IR determinations.

**DECISION**

Affirmed in part and reversed and rendered in part.

The parties stipulated that the compensable injury includes at least a left knee sprain/strain, left knee meniscus tear, and a left hip sprain/strain. A prior decision and order determined that the compensable injury extends to aggravation of left hip osteoarthritis and degenerative joint disease. The claimant was injured when he stepped in a hole while walking down a steep incline of a driveway while working.

The hearing officer found that Dr. C was appointed as designated doctor for the issues of MMI and IR because the previous designated doctor was not eligible to receive a request for clarification. We find no error in the appointment of Dr. C as designated doctor.

**MMI**

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<sup>1</sup> We note the hearing officer incorrectly references November 9, 2015, as the date the record closed.

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.

The hearing officer’s determination that the claimant reached MMI on November 17, 2014, as certified by Dr. C is supported by sufficient evidence and is affirmed.

### **IR**

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.

Dr. C examined the claimant on September 16, 2015, and certified that the claimant reached MMI on the statutory date of November 17, 2014, with a 12% IR, using the AMA Guides. In his narrative report dated September 16, 2015, Dr. C stated he based his IR on range of motion (ROM) findings of (Dr. L) taken on December 8, 2014, for the left hip and ROM findings of (Dr. V) taken on February 26, 2015, for the left knee, because these findings were the closest to the statutory date of MMI.

Using Table 40, page 3/78 of the AMA Guides, Dr. C assessed 8% whole person (WP) impairment for left hip ROM deficits: 2% WP impairment for 80° of flexion; 0% WP impairment for 25° extension; 0% WP impairment for 35° abduction; 2% WP impairment for 15° adduction; 0% WP impairment for 50° internal rotation; and 4% WP impairment for 15° for external rotation. Using Table 41, page 3/78 of the AMA Guides, Dr. C assessed 4% WP impairment for loss of ROM of the claimant’s left knee, for limited flexion of 100°. Using the Combined Values Chart, page 322 of the AMA Guides, Dr. C then combined 8% WP impairment for the left hip with 4% WP impairment for the left knee which results in 12% IR for the claimant’s compensable injury.

In Section 3.2 entitled “The Lower Extremity,” page 3/75, the AMA Guides provide in part that:

If the patient has several impairments of the same lower extremity part, such as the leg, or impairments of different parts, such as the ankle and a toe, the [WP] estimates for the impairments are combined (Combined Values Chart, p. 322). If both extremities are impaired, the impairment of each should be evaluated and expressed in terms of the [WP], and the [2%] should be combined (Combined Values Chart, p. 322).

In Section 3.2 entitled “[ROM],” page 3/77, the AMA Guides, provide in part, that “[e]valuating permanent impairment of the lower extremity according to its [ROM] is a suitable method.” Section 3.2e does not require that a certifying doctor must only use the most severe impairment for an individual direction of motion within the same table [Tables 40 through 43]. See *also* APD 110741, decided July 25, 2011.

However, Dr. C mistakenly assigned 0% impairment for 25° of extension of the left hip. Table 40, page 3/78 provides moderate impairment, 4% WP impairment, for ROM measured 20°-29°.

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 APD 121194, decided September 6, 2012; 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, the certifying doctor’s assigned IR can be mathematically corrected based on the documented measurements for the left hip.

Assigning 4% impairment for loss of ROM based on 25° of extension with the previous impairment assigned based on Table 40 results in 12% impairment for the left hip rather than 8% as assigned by Dr. C. Combining 12% impairment for the left hip with 4% impairment for the left knee results in a WP impairment for the compensable injury of 16% rather than 12%.

The hearing officer found that the preponderance of the other medical evidence is not contrary to Dr. C’s assigned 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 12% and we render a new decision that the claimant’s IR is 16%, as mathematically corrected.

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.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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K. Eugene Kraft  
Appeals Judge

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Carisa Space-Beam  
Appeals Judge