

APPEAL NO. 160742

FILED JUNE 17, 2016

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 March 16, 2016, in Austin, Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the respondent (claimant) reached maximum medical improvement (MMI) on March 9, 2015; and (2) the claimant's impairment rating (IR) is 21%.

The appellant (carrier) appealed the hearing officer's determinations, contending that the hearing officer erred in adopting the MMI/IR certification from (Dr. P), the designated doctor appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division), and should have adopted the MMI/IR certification from (Dr. B), the post-designated doctor required medical examination doctor. The claimant responded, urging affirmance of the hearing officer's determinations.

**DECISION**

Reformed in part, affirmed in part, and reversed and rendered in part.

The parties stipulated at the CCH that venue is proper in the Austin Field Office. However, Conclusion of Law No. 2 incorrectly states that venue is proper in the San Antonio Field Office. We reform Conclusion of Law No. 2 to state that venue is proper in the Austin Field Office to reflect the correct venue as stipulated to by the parties at the CCH.

The parties also stipulated that the claimant sustained a compensable injury on (date of injury). The claimant testified he was injured when a very heavy metal container fell onto his arms. Medical records in evidence establish that the claimant was diagnosed with right distal radius and ulna fractures and non-displaced mid-shaft fracture of the left radius. Medical records in evidence also establish the claimant underwent numerous surgeries to his arms.

**MMI**

The hearing officer's determination that the claimant reached MMI on March 9, 2015, 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. P, the designated doctor, examined the claimant on August 19, 2015, and certified that the claimant reached MMI on March 9, 2015, with a 21% IR using 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). Dr. P used Figures 19, 21, 23, 26, 29, 32, and 35 on pages 32, 33, 34, 36, 38, 40, and 41 of the AMA Guides in making his assignment of IR. Dr. P assigned 22% upper extremity (UE) impairment for range of motion (ROM) deficits of the claimant's right index, middle, ring, and little fingers, 6% UE impairment for the claimant's right wrist, 5% UE impairment for the claimant's right elbow, 2% UE impairment for the claimant's left wrist, and 3% UE impairment for the claimant's left elbow, for a combined whole person impairment (WPI) of 21%. Based on the ROM measurements contained on the worksheets in his report, Dr. P's impairment for the claimant's right fingers and elbow and left wrist and elbow are made in accordance with the AMA Guides.

However, Dr. P's impairment for the claimant's right wrist contains an error. In his attached worksheet Dr. P noted 40 degrees of flexion and assigned a 4% impairment for ROM deficits in the claimant's right wrist. Figure 26 on page 36 of the AMA Guides provides that 40 degrees of flexion results in 3% impairment, not 4% as assigned by Dr. P. Dr. P correctly assigned 0% impairment for extension of the right wrist, 2% impairment for radial deviation of the right wrist, and 0% impairment for ulnar deviation of the right wrist based on his ROM measurements. Adding the impairments for the claimant's right wrist as instructed by the AMA Guides results in 5% UE impairment for the right wrist, not 6% as assigned by Dr. P. Combining 22% for the claimant's right fingers, 5% for the claimant's right wrist, and 5% for the claimant's right elbow result in 30% UE impairment, not 31% as assigned by Dr. P. Using Table 3 on page 20 of the AMA Guides, 30% UE impairment converts to 18% WPI for the claimant's right UE, not 19% as assigned by Dr. P. Combining 18% WPI for the claimant's right UE with 3% WPI for the claimant's left UE results in 20% WPI, not 21% as assigned by Dr. P.

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) 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, Dr. P's assigned IR can be mathematically corrected based on the documented ROM measurements of the claimant's right wrist. As explained above, the correct IR using Dr. P's documented ROM measurements results in 20% IR, not 21% as assigned by Dr. P. The hearing officer found that the preponderance of the evidence is not contrary to Dr. P's MMI/IR certification, 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 21%, and we render a new decision that the claimant's IR is 20%.

#### **SUMMARY**

We reform Conclusion of Law No. 2 to state that venue is proper in the Austin Field Office to reflect the correct venue as stipulated to by the parties at the CCH.

We affirm the hearing officer's determination that the claimant reached MMI on March 9, 2015.

We reverse the hearing officer's determination that the claimant's IR is 21%, and we render a new decision that the claimant's IR is 20%.

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

**CT CORPORATION SYSTEM  
1999 BRYAN STREET, SUITE 900  
DALLAS, TEXAS 75201-3136.**

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Carisa Space-Beam  
Appeals Judge

CONCUR:

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K. Eugene Kraft  
Appeals Judge

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Margaret L. Turner  
Appeals Judge