

APPEAL NO. 950131
FILED MARCH 10, 1995

This appeal is brought pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on October 13, 1994, in (City), Texas, with (hearing officer) presiding as hearing officer. The record was held open to seek clarification from the designated doctor, to forward the response from the designated doctor to the parties, and to provide the parties the opportunity to comment on the response from the designated doctor. The hearing officer closed the record on December 27, 1994. With respect to the two issues before him, the hearing officer determined that the report of the designated doctor is entitled to presumptive weight and that the respondent (claimant) reached maximum medical improvement (MMI) on June 7, 1994, with a 24% impairment rating (IR). The appellant (carrier) requested review arguing that the designated doctor did not render a report in accordance with the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides) and requesting that the Appeals Panel reverse the decision of the hearing officer and render a decision that the claimant's IR is 14% as reported by the claimant's treating doctor. The claimant responded urging that the great weight of the other medical evidence is not contrary to the report of the designated doctor and that we affirm the decision of the hearing officer.

DECISION

We reverse and remand.

The claimant injured his eye in the course and scope of his employment on _____. He was treated by (Dr. D). Dr. D completed a Report of Medical Evaluation (TWCC-69) on three occasions. In a TWCC-69 dated April 7, 1993, Dr. D reported that the claimant had not reached MMI, estimated that he would reach MMI on December 30, 1993, and reported a 40% right eye impairment and a 20% whole body impairment. In a TWCC-69 dated November 4, 1993, Dr. D reported that the claimant had reached MMI, did not provide a date that the claimant reached MMI, and assigned a zero percent IR. In a TWCC-69 dated January 2, 1994, Dr. D reported that the claimant reached MMI on January 1, 1994, that he has a 15% visual system loss, and assigned a 14% IR. The carrier disputed the 14% IR, and (Dr. K) was appointed as the Texas Workers' Compensation Commission (Commission)-selected designated doctor. In a letter dated May 23, 1994, to the disability determination officer handling the claim, Dr. K wrote "[claimant] has sustained a 50% visual field loss to the right eye as a result of his eye injury which occurred on _____. This results in an overall visual loss of 25%." The Commission requested that Dr. K file a TWCC-69. In a TWCC-69 dated June 7, 1994, Dr. K certified that the claimant reached MMI on June 7, 1994, and assigned a 25% IR. In the TWCC-69 under "Document objective laboratory or clinical finding of impairment" Dr. K entered "Visual field loss, right eye; half of visual field of 1 eye = 25% total loss," under "BODY PART/SYSTEM" she entered "R EYE," and under "RATING" she

entered "25%." On November 22, 1994, the hearing officer wrote to Dr. K making reference to Chapter 8 of the AMA Guides and asking her the following six questions:

1. What medical records did you have when you evaluated [claimant]? Do you need any reports that you did not have?
2. What tests did you perform on [claimant's] right eye and left eye? What were the results? What is the impairment of each as set out in the Guides for each test?
3. What is the percentage of impairment for [claimant's] visual field as determined under the Guides?
4. What is [claimant's] whole body impairment as determined under the Guides?
5. What, if any, is [claimant's] risk of gradual or sudden deterioration of his vision, such as retinal detachment, currently.
6. Does it remain your medical opinion that [claimant] reached [MMI] on June 7, 1994 from his _____ injury. If not, please explain.

In a letter dated December 7, 1994, Dr. K wrote:

Here is the information you requested:

1. [Claimant] brought all of his previous exam records with him. I had all reports that were needed.
2. We performed the following tests on [claimant]: visual acuity; pupillary exam; extraocular muscle function; manifest refraction; applanation tonometry and silt lamp exam. They were all within normal limits. A dilated fundus exam was also performed and fundus of the right eye showed vitriol floater and pigment epithelial changes. The left fundus was normal.
3. 25% impairment in the visual field of the right eye.
4. Since my specialty is ophthalmology, a whole body [IR] as set forth in the guidelines should be obtained from [claimant's] primary care physician.
5. his is an unknown factor.
6. Yes, that remains my opinion. It is my opinion that [claimant's] visual field loss in his right eye was due to traumatic optic neuropathy, resulting from the blunt facial injury he suffered in (month year).

The hearing officer sent Dr. K's response to the parties by letter dated December 13, 1994. The record does not contain a response from the claimant. In a letter to the hearing officer dated December 22, 1994, the carrier wrote that the information from Dr. K is conflicting in that her May 23, 1994, correspondence reports a 50% visual field loss to the right eye and a 25% overall visual loss while the December 7, 1994, correspondence reports a 25% impairment in the visual field of the right eye and that Dr. K's opinion is not based on the appropriate AMA Guides. In its letter the carrier also reurged its request that the claimant be examined by (Dr. S), that a designated doctor who is familiar with the AMA Guides be selected, and, in the alternative, that the 14% IR assigned by the claimant's treating doctor be adopted by the Commission. The hearing officer determined that the report of the designated doctor is entitled to presumptive weight, that her report is not contrary to the great weight of the other medical evidence, and that the claimant reached MMI on June 7, 1994, as certified by the designated doctor. The hearing officer also determined that the 25% loss of the visual field reported by the designated doctor translates to a 24% whole body IR and that the claimant has a 24% whole body IR.

Section 408.124 requires that an award of impairment income benefits, whether by the Commission or a court, shall be made on an IR determined using the statutorily mandated version of the AMA Guides. Chapter 8 of the AMA Guides urges the doctor to review Chapters 1 and 2 and states that the report should include a medical evaluation with five items listed, an analysis of findings with five items listed, and a comparison of results of analysis with impairment criteria with four items listed. Section 8.5, Steps to Determine Impairment of the Visual System and of the Whole Person Contributed by the Visual System, explains how to calculate impairment of the visual system and whole body impairment. A review of Dr. K's letter dated May 23, 1994; the TWCC-69 she filed dated June 7, 1994; her letter dated December 7, 1994; and the AMA Guides reveals that she did not render a report in accordance with the AMA Guides. It appears that she did not use Table 5, Visual Systems, in Chapter 8 of the AMA Guides. Dr. K reported that the claimant sustained a 50% visual field loss to the right eye as a result of his eye injury and that this results in an overall visual loss of 25%. On December 7, 1994, she stated that there was a "25% impairment in the visual field of the right eye." Table 5 indicates that a 50% impairment for one eye with a zero percent impairment for the other eye results in a 13% impairment to the visual system. Table 6, Impairment of the Visual System as it Relates to Impairment of the Whole Person, states that a 13% impairment of the visual system results in a 12% whole body IR. While there is no indication that Dr. K did not conduct a thorough examination, the record does not indicate how she determined that the claimant had a 50% impairment of the visual field of the right eye and does not indicate that she made a report in accordance with the AMA Guides. In her December 7, 1994, letter, Dr. K wrote "[s]ince my specialty is ophthalmology, a whole body impairment rating as set forth in the guidelines should be obtained from [claimant's] primary care physician." The report of Dr. K as it appears in the record, including the letters from Dr. K, is not entitled to presumptive weight. The carrier also urges that we adopt the 14% IR assigned by Dr. D. A review of the report filed by Dr. D reveals how he arrived at 20% loss of vision in one eye but it does not appear that he used Table 5 to arrive at an impairment of the

visual system. Since the Commission does not have an IR that appears to have been assigned in accordance with the AMA Guides, clarification from the designated doctor or an IR from another designated doctor if Dr. K cannot or refuses to comply the requirements of the 1989 Act is needed before the Commission can award an IR. Section 408.124 and Texas Workers' Compensation Commission Appeal No. 93045, decided March 3, 1993.

The claimant also raised matters that do not pertain to the issue before the hearing officer and are under the preview of the division of compliance and practices and not this Appeals Panel. The claimant previously corresponded with the division of compliance and practices and may do so again.

We reverse the decision and order of the hearing officer and remand for the hearing officer to fully develop the facts required to determine the IR of the claimant, to make findings of fact and conclusions of law, and to award impairment income benefits not inconsistent with this decision. Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file the request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission division of hearings, pursuant to Section 410.202. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

Tommy W. Lueders
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Gary L. Kilgore
Appeals Judge