

APPEAL NO. 950186

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 January 9, 1995, in (city), Texas, with (hearing officer) presiding as hearing officer. With respect to the two issues before her, she determined that the appellant (claimant) reached maximum medical improvement (MMI) on February 15, 1993, with an eight percent impairment rating (IR) as reported by (Dr. M), the Texas Workers' Compensation Commission (Commission)-selected designated doctor. The claimant appealed arguing that Dr. M did not touch the claimant during the visit; that the claimant does not recall any range of motion (ROM) testing; that Dr. M's report offers no rationale for the conclusion that MMI was reached on February 15, 1993, with an eight percent IR; and that the great weight of the other medical evidence is contrary to the report of Dr. M and requests that the Appeals Panel reverse the decision of the hearing officer and render a decision that the claimant has not reached MMI. The respondent (carrier) urges that the report of the designated doctor is entitled to presumptive weight and that the great weight of the other medical evidence is not contrary to the report of the designated doctor and requests that we affirm the decision of the hearing officer.

DECISION

We reverse and remand.

The claimant testified that he hurt his low back unloading bundles of shingles on (date of injury). He said that he has worked in construction most of his adult life and that he has not been able to work since he hurt his back. He said that he was first treated by (Dr. JS), a chiropractor, who referred him to (Dr. P), an orthopedic surgeon. On April 1, 1992, Dr. P performed a laminectomy with discectomy at L4-5 on the right. The claimant said that the surgery resolved his symptoms for a while but then things got worse and he developed pain in his right leg in addition to the pain in his low back. The claimant said that he moved to another city and was seen by (Dr. SS). On April 4, 1994, Dr. SS wrote:

Recent MRI does suggest, by [Dr. P's] comparison with old films, a new disc herniation. Unfortunately this alters the prognosis for improvement. He is presently treated by [Dr. P]. I would like [Dr. P] to make the final decision as to his ultimate treatment.

* * * * *

In view of the fact that he is being referred for correction of this disc, I feel his [IR] at this time would be somewhat nebulous.

The claimant testified that he contacted Dr. P, who said that she no longer performed surgery, and that he could not get to see other surgeons. He said that he can walk about one-half a mile on a good day, cannot lift anything over five pounds, and cannot sit for very

long. On cross-examination he testified that Dr. M just talked with him, did not examine him, and did not touch him and that he does not remember Dr. M having him lift his legs. He said that Dr. SS made referrals to other doctors to see if he needed surgery but that the carrier has not approved his seeing other doctors.

In an unsigned, undated Report of Medical Evaluation (TWCC-69) Dr. JS reported that the claimant had reached MMI, did not provide the date he reached MMI, and provided an IR of "15% may go up to 20%." Dr. P reported that the claimant reached MMI on October 12, 1992, with a 10% IR. The report of Dr. M, the designated doctor, is very brief and the record does not contain any attachments to the TWCC-69. Item 13, narrative history, of the TWCC-69 contains:

D/I – (date of injury) - 29 yo WM - unloading shingles as a roofer. He twisted his back and developed low back pain with right leg pain. Conservative treatment until April 1992 when he underwent back surgery at L4-5 - Now with residual symptoms.

In item 14 concerning MMI, he did not check "NO" or "YES" but after "YES" entered "15 Feb 1993 8%" and after "Document objective laboratory or clinical finding of impairment" wrote "MRI - DDD L3-4 L4-5 L5-S1 with protrusion of disc at L4-5 rt. Evidence of laminectomy discectomy L4-5 R on views of lumbar spine." In item 15 under "BODY PART/SYSTEM" he wrote "Low Back - (Total Body)" and under "RATING" he wrote "8%."

The claimant raised questions about the examination by Dr. M and the report filed by Dr. M. In Texas Workers' Compensation Commission Appeal No. 93296, decided May 28, 1993, the Appeals Panel held that a doctor assigning an IR must do so using the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides). We stated that the AMA Guides provide that an IR of the spine consists of three components. They are a specific disorder under Table 49 of the AMA Guides, ROM measurements, and assessment of radiculopathies. Appeal No. 93296, *supra*. The report of Dr. M provides impairment for a specific disorder, but it does not mention either ROM or radiculopathy. The claimant testified that he does not remember Dr. M having him lift his legs. While Dr. M may have performed an examination in compliance with the AMA Guides, his report does not reflect that he did.

We reverse the decision of the hearing officer and remand for the hearing officer to seek clarification from the designated doctor, and request that he conduct additional testing, if appropriate. The hearing officer shall develop the evidence and make findings of fact and conclusions of law as are appropriate and 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:

Joe Sebesta
Appeals Judge

Gary L. Kilgore
Appeals Judge