

APPEAL NO. 950410

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 May 2, 1994, and February 9, 1995, in (city), Texas, with (hearing officer) presiding as hearing officer. Addressing the sole disputed issue, the hearing officer determined that the respondent's (claimant herein) correct impairment rating (IR) was 16% as determined by (Dr. P), a designated doctor selected by the Texas Workers' Compensation Commission. The appellant (carrier herein) appeals this determination arguing that Dr. P misapplied the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides) in arriving at claimant's IR and requests the appointment of a second designated doctor. No response has been received from the claimant.

DECISION

We reverse and remand for the appointment of a second designated doctor.

It was not disputed that the claimant sustained a compensable back injury on (date of injury). The parties agreed that he reached maximum medical improvement on May 11, 1993. On November 2, 1993, Dr. P completed a Report of Medical Evaluation (TWCC-69) in which he assigned the claimant a 16% IR. The components of this IR were 12% for a specific disorder of the spine and four percent for loss of range of motion (ROM).

Even though the actual ROM measurements were invalid because the claimant's "efforts seem less than optimum," Dr. P assigned four percent for loss of ROM in a process whereby he "apportioned [ROM] to four (4%) percent in order to make that compatible with the guidelines established by Table 50 of the [AMA Guides]." In this approach to assigning an IR for loss of ROM, Dr. P used Table 50 of the AMA Guides, which deals with ankylosis, as in effect, a self-correcting mechanism to make up for the invalidity of the ROM measurements. The Appeals Panel has explicitly noted in the past that Table 50 is to be used only when ankylosis is present and not in addition to or in combination with ROM measurements. Texas Workers' Compensation Commission Appeal No. 94426, decided May 16, 1994; Texas Workers' Compensation Commission Appeal No. 94181, decided March 24, 1994. We disapproved Dr. P's methodology in Texas Workers' Compensation Commission Appeal No. 94966, decided September 6, 1994, and in Appeal No. 94181, *supra*, and affirmed a hearing officer's disapproval of this approach in our recent Texas Workers' Compensation Commission Appeal No. 950343, decided April 19, 1995 (unpublished). We disapprove this misapplication of the AMA Guides again today.

The carrier requests the appointment of a second designated doctor. In Texas Workers' Compensation Commission Appeal No. 950209, decided March 28, 1995, the Appeals Panel stated that a second designated doctor is to be appointed only in those rare situations where the first designated doctor is unable or unwilling to perform these duties under the criteria set forth in the AMA Guides. In this case, the hearing officer addressed

several questions to Dr. P about his use of Table 50 and how he arrived at a four percent IR for loss of ROM even though ROM measurements were invalidated. In a lengthy response to this inquiry, Dr. P reiterated his disagreement with the AMA Guides and refused to "discard" a rating for loss of ROM. Under these circumstances we see little point in returning the claimant to Dr. P for another evaluation of his IR consistent with our decision in this case.

The decision and order of the hearing officer which gave presumptive weight to Dr. P's IR is reversed. We remand the case to the hearing officer to appoint a second designated doctor to address the issue of the claimant's correct IR. See Appeal No. 94966, *supra*.

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 a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's division of hearings, pursuant to Section 410.202. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

Alan C. Ernst
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Thomas A. Knapp
Appeals Judge