

APPEAL NO. 021312-s
FILED JULY 3, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on May 1, 2002, the hearing officer determined that the appellant's (claimant) impairment rating (IR) for her right shoulder injury is 5% for loss of range of motion (ROM) after he "corrected" the designated doctor's report by deducting the 24% rating the designated doctor assigned for the claimant's right shoulder surgery. The claimant has requested our review, asserting that the hearing officer's correction of the designated doctor's 19% IR was no mere mathematical recomputation or deduction of a rating for a noncompensable body part but was a substantive change in the IR made by a layman who never examined the claimant. The claimant asks that we reverse and render a new decision that her IR is 19%, as determined by the designated doctor. The respondent (carrier) urges in its response that the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides) do not provide a rating for the type of shoulder surgery the claimant underwent and that the hearing officer merely corrected the designated doctor's 19% IR by deducting from that IR the surgery rating not provided for in the AMA Guides.

DECISION

Reversed and remanded.

The claimant testified that, while working in the motor freight business she operated, she injured her right shoulder unloading a TV on _____; that following chiropractic treatment, she underwent surgery on the shoulder by Dr. M, an orthopedic surgeon, on September 12, 2000; and that on March 14, 2001, she commenced employment as a prison guard. She contends that the hearing officer erred in "correcting" the IR assigned by the designated doctor, Dr. R, by deleting from the 19% IR the rating Dr. R assigned for her shoulder surgery. Dr. R's narrative report of June 14, 2001, states the "impairment diagnosis" as "post traumatic right shoulder impingement syndrome with resultant arthroscopic subacromial decompression and arthroscopic distal clavicle resection surgery." After assigning a rating of 9% for right upper extremity ROM loss, which converts to a whole person rating of 5%, Dr. R assigned a 24% rating from Table 19, page 47, of the AMA Guides for what he described as "Impairment Due to Specific Disorders of the Upper Extremity Following Surgery," resulting in a total upper extremity rating of 31%. Using Table 3, page 20, of the AMA Guides, Dr. R then converted the 31% upper extremity rating to a whole person IR of 19%.

Dr. M's operative report of September 12, 2000, states the postoperative diagnosis as "(1) Impingement syndrome, right shoulder (726.2)" and "(2)

Acromioclavicular [AC] degenerative joint disease [DJD], right shoulder (715.91).” Dr. M states the surgical procedures performed as (1) diagnostic arthroscopy, right shoulder; (2) arthroscopic subacromial decompression, right shoulder; (3) arthroscopic distal clavicle resection, right shoulder; and (4) placement of catheter for pain pump. His “findings” are stated as (1) type 3 acromion; (2) AC joint DJD with a large intraclavicular spur; (3) chronic bursitis, subacromial space; and (4) intact glenohumeral joint. The details of the procedure reflect that after portals were made, a systematic examination of the internal portion of the right glenohumeral joint was performed with the above findings noted; that this procedure was followed by the performing of a standard subacromial decompression; and that this procedure was followed by the removal of approximately 8 mm of the distal clavicle using the stone cutter.

The carrier introduced the July 17, 2001, December 18, 2001, and January 16, 2002, reports of Dr. W, a general surgeon, who reviewed Dr. M’s operative report and Dr. R’s narrative report. Dr. W states that while he agrees with Dr. R that the claimant has a 5% whole person IR for loss of right shoulder ROM, he believes that Dr. R erred in assigning any rating for the surgical procedures because the surgery did not involve the glenohumeral joint. Dr. W cites several decisions of the Appeals Panel concerning the assignment of ratings for shoulder surgery and concludes that the claimant’s correct IR is 5%. On October 9, 2001, Dr. R wrote the following: “According to Table 19, Page 47 [of the AMA Guides] the level of Arthroplasty for shoulder surgery is assigned a 24% impairment. [The claimant] underwent Arthroscopic surgery for the [AC] joint. Arthroplasty is defined as generalized for any joint. Her surgery was specific for particular joint pertaining to the shoulder, therefore, Table 19, Page 47 is the appropriate Table.” Dr. W subsequently reported that Dr. R was simply relying on the dictionary definition of “arthroplasty” without regard to the fact that the surgery was on the AC joint and not the glenohumeral joint. Dr. W iterates that Appeals Panel decisions have restricted ratings for shoulder joint surgery to the glenohumeral joint and have held that acromioplasty should not be considered as a “resection arthroplasty.” Dr. W concludes that no impairment can be assigned for the claimant’s shoulder surgery, other than for the loss of ROM.

There does not appear to be any dispute that during the arthroscopic surgery on the claimant’s right shoulder, her glenohumeral joint was found “intact” and was not resected, and that the two surgical procedures carried out by Dr. M, beyond the diagnostic arthroscopy which neither party contends warrants a surgical rating, were a distal clavical resection and a subacromial decompression. The issue for the hearing officer then became whether either of these latter two surgical procedures qualified for a rating under Table 19 of the AMA Guides.

Dr. R’s narrative report of June 14, 2001, states the “impairment diagnosis” as “post traumatic right shoulder impingement syndrome with resultant arthroscopic subacromial decompression and arthroscopic distal clavicle resection surgery.” After assigning a rating of 9% for right upper extremity ROM loss, Dr. R next assigned a 24% rating from Table 19, page 47, of the AMA Guides for “impairment due to specific disorders of the upper extremity following surgery” resulting in a total upper extremity

rating of 31%. Using Table 3, page 20, of the AMA Guides, Dr. R then converted the upper extremity rating to a whole person IR of 19%. Table 19 is entitled “Impairment of the Upper Extremity Following Arthroplasty of Specific Bones or Joints.” For arthroplasty at the “shoulder” level, Table 19 provides for 24% impairment of the upper extremity for “resection arthroplasty” and 30% for “implant arthroplasty.” Table 17 is entitled “Impairment Values for Digits, Hand, Upper Extremities, and Whole Person for Disorders of Specific Joints.” In the “Joints” column, beneath “Shoulder,” appears “Glenohumeral” and for this joint, Table 17 provides for 60% impairment of the upper extremity and 36% impairment of the whole person.

In Texas Workers' Compensation Commission Appeal No. 94583, decided June 21, 1994, the Appeals Panel affirmed the hearing officer's adoption of the designated doctor's report, which did not assign a 24% IR from Table 19 for resection of the distal aspect of the clavicle. In Texas Workers' Compensation Commission Appeal No. 94685, decided July 7, 1994, the Appeals Panel remanded for a determination of whether a 24% IR for a resection arthroplasty should be assigned. The remand decision, Texas Workers' Compensation Commission Appeal No. 941545, decided January 2, 1995, affirmed the decision of the hearing officer, which adopted the report of the designated doctor, who did not assign a rating under Table 19 for resection of the clavicle and repair of the rotator cuff. In Texas Workers' Compensation Commission Appeal No. 951188, decided August 31, 1995, the Appeals Panel affirmed a decision in which the designated doctor had originally assigned a 24% IR for an acromioplasty but later deducted that rating from the IR. In Texas Workers' Compensation Commission Appeal No. 960844, decided June 20, 1996, another case involving AC joint surgery, the Appeals Panel remanded for the hearing officer to inquire into the employee's IR without a rating from Table 19 for the reason that Table 19 does not apply to acromioplasty surgery. On remand, the designated doctor assessed a 13% IR without a Table 19 rating and the Appeals Panel, in Texas Workers' Compensation Commission Appeal No. 970579, decided May 12, 1997, declined to revisit the issue of whether a designated doctor should have the discretion to rate an acromioplasty as an arthroplasty under Table 19. In Texas Workers' Compensation Commission Appeal No. 981539, decided August 13, 1998, the Appeals Panel read Tables 17 and 19 together in considering the derivation of an IR for shoulder surgery. That decision concluded that since Table 19 refers only to the shoulder under the “Joints” column, while Table 17 specifies the glenohumeral joint under “Shoulder,” it is arthroplasty of the glenohumeral joint that can be rated under Table 19. The decision stated that “[a]s a result, a resection of the right distal clavicle may not receive an IR of 24% from Table 19” and that “[t]his decision does not address whether other shoulder surgical procedures may or may not qualify for ratings under Table 19” The Appeals Panel has also affirmed hearing officers who adopted the reports of designated doctors who did not assign a rating for acromioplasty procedures. See, e.g., Appeal No. 951188, *supra*; Appeal No. 960844, *supra* (remand decision in Appeal No. 970579, *supra*).

The hearing officer does not cite any Appeals Panel authority concerning ratings for shoulder surgery. What he does do is reference the paragraph entitled “Arthroplasty” on page 46 of the AMA Guides, which states, in part, that “[s]imple

resection arthroplasty is given 40% of the impairment of the upper extremity due to loss of function of a joint.” The hearing officer then notes that 40% of the 60% provided for the glenohumeral joint in Table 17 is 24%, which is the rating for the shoulder provided for in Table 19. The hearing officer concludes that it is surgery on the glenohumeral joint that qualifies for a rating under Table 19 and that there is no specific rating for an acromioplasty. The hearing officer then resolves the rating issue, stating the following: “[Dr. R’s] rating can be corrected by deleting the rating from Table 19, leaving 9% upper extremity impairment. Using the conversion table, Table 3, Claimant’s 9% upper extremity rating is 5% whole person, and that is the corrected rating. The designated doctor’s report, as corrected, will be adopted.”

We here follow those of our prior decisions that have held that impairment, if any, from AC joint surgery, cannot be rated under Tables 17 and 19 of the AMA Guides. We reverse the decision and order of the hearing officer and remand for the hearing officer to obtain another report from the designated doctor and to make the necessary determinations to decide whether the claimant has any impairment to his injured shoulder in addition to abnormal ROM already assigned. The designated doctor should be advised of the definition of impairment in Section 401.011(23). The designated doctor should also be advised that under the provisions of the AMA Guides, an acromioplasty is not to be rated as resection or implant arthroplasty of the shoulder because only the glenohumeral joint is listed under “Shoulder” in Table 17. See Texas Workers' Compensation Commission Appeal No. 002399, decided November 28, 2000.

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 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

The true corporate name of the insurance carrier is **LUMBERMENS MUTUAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TX 78701.**

Philip F. O'Neill
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Robert E. Lang
Appeals Panel
Manager/Judge