

APPEAL NO. 031168
FILED JULY 2, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 29, 2003. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) reached maximum medical improvement (MMI) on August 8, 2002, with a 26% impairment rating (IR) as certified by the designated doctor chosen by the Texas Workers' Compensation Commission (Commission). The appellant (carrier) appealed the hearing officer's determination that the claimant's IR is 26%, asserting that the only proper IR is the 9% IR assigned by the carrier's required medical examination (RME) doctor. The claimant responded, requesting affirmance. There is no appeal of the hearing officer's determination that the claimant reached MMI on August 8, 2002, which was stipulated to by the parties.

DECISION

Affirmed.

The claimant sustained a compensable injury on _____, while performing welding work in his job as an ironworker. While welding on that day, his shirt caught on fire, causing third-degree, full thickness burns to his right upper arm and shoulder, armpit, and the right side of his back. The claimant underwent extensive treatment, including skin grafting.

On August 8, 2002, the designated doctor chosen by the Commission evaluated the claimant. The designated doctor certified in a Report of Medical Evaluation (TWCC-69) that the claimant reached MMI on August 8, 2002, with a 27% IR. The parties stipulated that the claimant reached MMI on August 8, 2002. The designated doctor's MMI certification was the first certification of MMI for the claimant. The designated doctor used 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 4th ed.) to determine the claimant's IR. It is undisputed that the AMA Guides 4th ed. is the appropriate edition of the AMA Guides to use in this case. See Tex. W.C. Comm'n 28 TEX. ADMIN. CODE § 130.1(c) (Rule 130.1(c)). Using the Combined Values Chart (CVC), the designated doctor combined a 3% whole person (WP) impairment for abnormal range of motion (ROM) of the right shoulder under Chapter 3, pertaining to the musculoskeletal system, with a 25% WP impairment for skin disorders under Table 2, Class 3, of Chapter 13, pertaining to the skin, to arrive at the 27% IR. Table 2 of Chapter 13 has five classes for skin disorders. The classes pertinent to this case are Class 1 (0% - 9%), Class 2 (10% - 24%), and Class 3 (25% - 54%).

In response to a request for clarification from the Commission, the designated doctor revised the IR in a TWCC-69 by placing the claimant in Class 2 of Table 2 of

Chapter 13 for skin disorders, assigning the claimant a 24% WP impairment for skin disorders, and combining the skin disorder impairment with the 3% WP impairment for the abnormal ROM of the right shoulder using the CVC to arrive at a 26% IR.

In a TWCC-69 dated September 24, 2002, the treating doctor used the AMA Guides 4th ed. and assigned the claimant a 4% WP impairment for abnormal ROM of the right shoulder under Chapter 3 and a 9% WP impairment for skin disorders under Class 1 of Table 2 of Chapter 13. The treating doctor used the CVC to arrive at an IR of 13%.

In a TWCC-69 dated December 12, 2002, the carrier's RME doctor used the AMA Guides 4th ed. to assign the claimant a 9% WP IR under Class 1 of Table 2 of Chapter 13 for skin disorders. The RME doctor found no impairment for ROM of the right shoulder.

One carrier peer review doctor reported that the claimant's IR should be 3%. Another carrier peer review doctor reported that the 9% IR assigned by the carrier's RME doctor was accurate, that the claimant should be placed in Class 1 of Table 2 of Chapter 13 for skin disorders, and that the AMA Guides 4th ed. prohibits assigning impairment based on skin disorders with impairment for ROM.

Section 408.125(c) provides that for a claim for workers' compensation benefits based on a compensable injury that occurs on or after June 17, 2001, the report of the designated doctor shall have presumptive weight, and the Commission shall base the IR on that report unless the great weight of the other medical evidence is to the contrary, and that if the great weight of the medical evidence contradicts the IR contained in the report of the designated doctor chosen by the Commission, the Commission shall adopt the IR of one of the other doctors. Rule 130.6(i) provides that the designated doctor's response to a Commission request for clarification is considered to have presumptive weight as it is part of the doctor's opinion. The hearing officer found that the 26% IR assigned by the designated doctor in his revised TWCC-69 is not contrary to the great weight of the other medical evidence, and concluded that the claimant's IR is 26%.

The carrier contends that the hearing officer's decision that the claimant has a 26% IR is wrong as a matter of law and is against the great weight and preponderance of the evidence. The carrier contends that the claimant should be placed in Class 1 of Table 2 of Chapter 13 for skin disorders and not in Class 2. In placing the claimant in Class 2 in his revised report, the designated doctor wrote that signs and symptoms of skin disorder are present, that there is limitation in the performance of some of the activities of daily living, and that intermittent to constant treatment may be required, which are the requirements set out in Table 2 for a Class 2 impairment. The hearing officer noted in his decision that the determination as to which class of skin disorder is appropriate is in the area of medical judgment and that there was credible evidence to support the conclusion that the claimant's injury caused limitation in the performance of some, versus few, of the activities of daily living.

The carrier also asserts that “if other chapters are used to estimate the impairment from a patient’s skin disorder, the skin disorder evaluation would exclude assigning impairment based on skin disorder as well as items such as [ROM]” and that “the designated doctor provided the Claimant with double impairment for the same limitation.”

Page 278 of Chapter 13 notes that impairments of other body systems, including ROM, may be associated with skin impairments, and that when there is a permanent impairment of more than one body system, the extent of whole-person impairment related to each system should be evaluated, and the estimated impairment percentages should be *combined* using the CVC to determine the person’s total impairment. Page 280 of Chapter 13 notes that when the impairment resulting from a burn or scar is based on peripheral nerve dysfunction or loss of ROM, it may be evaluated according to the criteria in Chapters 3 and 4, provided appropriate guidelines exist in those chapters. It is also noted on page 280 that if other chapters were also used to estimate the impairment from a patient’s skin disorder, the skin disorder evaluation would *exclude* consideration of the components evaluated with those chapters, and that if impairment from a skin disorder is to be considered along with a component based on any other organ system, both components first must be expressed as whole-person impairment percents and then *combined* using the CVC. Example 2 for Class 2 impairments for skin disorders on page 283 of Chapter 13 deals with a worker who suffered a second-degree burn of the neck, and it notes in the comment section that the skin impairment should be combined using the CVC with the estimated impairment due to loss of motion of the neck.

Based on our reading of the designated doctor’s reports and the AMA Guides 4th ed., we cannot conclude that the designated doctor erred in combining the impairment for loss of right shoulder ROM under Chapter 3 with the impairment for a Class 2 skin disorder under Chapter 13.

The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. Although there is conflicting evidence in this case, we conclude that the hearing officer’s decision that the claimant has a 26% IR as certified by the designated doctor in his revised TWCC-69 is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We affirm the hearing officer's decision and order.

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

**MR. RUSSELL R. OLIVER
221 WEST 6TH STREET
AUSTIN, TEXAS 78701.**

Robert W. Potts
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Veronica Lopez-Ruberto
Appeals Judge