

APPEAL NO. 032982
FILED DECEMBER 11, 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 October 17, 2003. With respect to the single issue before him, the hearing officer determined that the appellant's (claimant) impairment rating (IR) is 15%. In her appeal, the claimant asserts that her proper IR is 25% as certified by the Texas Workers' Compensation Commission (Commission)-selected designated doctor. In its response, the respondent (carrier) asserts that the hearing officer properly disregarded the designated doctor's certification, and requests that the decision be reformed to certify that the claimant's IR is 5%.

DECISION

Reversed and rendered.

The record reflects that the claimant sustained a compensable injury to her cervical spine on _____; that the injury required surgical intervention by Dr. R; and that Dr. C is the designated doctor selected by the Commission.

In her appeal, the claimant argues that the hearing officer erred in not giving presumptive weight to the designated doctor's 25% IR. In its response, the carrier argues that the claimant's proper IR is 5% as certified by Dr. O. The difference in the ratings of Dr. C and Dr. O is attributable to the fact that the designated doctor placed the claimant in Diagnosis-Related Estimate (DRE) Category IV and assigned her a 25% IR from Table 73 of 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), while Dr. O placed the claimant in DRE Category II for minor impairment: clinical signs of neck injury are present without radiculopathy or loss of motion segment integrity, and assigned a 5% IR from Table 73. In the narrative report accompanying his Report of Medical Evaluation (TWCC-69), the designated doctor noted that an EMG and NCV performed postsurgery showed a C6-7 radiculopathy bilaterally. In his narrative report, Dr. O acknowledged that the claimant's EMG testing showed signs of radiculopathy and the designated doctor could have given a 15% IR; however, he nonetheless rated her at 5% because at the time of his examination the claimant did not have signs of cervical radiculopathy. On January 14, 2003, the Commission sent a letter of clarification to the designated doctor asking him to review a peer review report and to advise if it changed his opinion. In his response, the designated doctor stated that his opinion remained unchanged. He stated that motion segment integrity loss was present before the surgery, and that the claimant had verifiable radiculopathy. The hearing officer determined that the great weight of the other medical evidence was contrary to the designated doctor's IR because at the time of the designated doctor's examination, the claimant had radiculopathy at one level, but no loss of motion segment integrity or multilevel

neurologic compromise. We cannot agree that the evidence contrary to the designated doctor's opinion rises to the level of the great weight of the other medical evidence. Rather, this is a case where there is a genuine difference of medical opinion between the designated doctor and Dr. O as to whether or not the claimant is properly rated under DRE Category II or Category IV. Page 104 of the AMA Guides provides that a claimant can be placed in DRE Cervicothoracic Category IV if there is a "loss of motion segment or structural integrity **or bilateral or multilevel radiculopathy.**" (Emphasis added). Dr. C found that the claimant had bilateral radiculopathy. We have long held that by giving presumptive weight to the designated doctor, the 1989 Act provides a mechanism for accepting the designated doctor's resolution of such differences. Texas Workers' Compensation Commission Appeal No. 001659, decided August 25, 2000; Texas Workers' Compensation Commission Appeal No. 001526, decided August 23, 2000. Accordingly, the hearing officer erred in not giving presumptive weight to the designated doctor's IR in this instance.

The hearing officer's determination that the claimant's IR is 15% is reversed and a new decision rendered that the claimant's IR is 25%, as certified by the designated doctor.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Chris Cowan
Appeals Judge