

APPEAL NO. 040147
FILED MARCH 3, 2004

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 December 16, 2003. The hearing officer determined that the respondent's (claimant) impairment rating (IR) was 17% as assessed by the designated doctor whose opinion was not contrary to the great weight of the other medical evidence.

The appellant (carrier) appeals with the principal thrust of its position being that the designated doctor double rated the impairment for arthritis; that because there was a disagreement over the varus alignment, the use of the range of motion table is invalid according to page 3/77 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); and that the designated doctor's report expressed sympathy for the claimant and, therefore, demonstrates bias in his findings. The file does not have a response from the claimant.

DECISION

Affirmed.

It is undisputed that the claimant sustained a compensable right knee injury on _____, stepping off a truck. The claimant had knee surgery on October 21, 2002. The parties stipulated that the claimant attained maximum medical improvement (MMI) on April 21, 2003, as determined by Dr. S the designated doctor. It is undisputed that the proper edition of the AMA Guides is the 4th edition.

In a report dated April 22, 2003, Dr. S assessed a 17% IR based on 3% impairment from Table 37 ("Impairment from Leg Muscle Atrophy"), 4% impairment from Table 41 ("Knee Impairments"), and 10% impairment from Table 62 ("Arthritis Impairments Based on Roentgenographically Determined Cartilage Intervals"), combined to result in the 17% IR. The claimant's treating doctor has agreed with this rating.

Dr. B, the carrier's required medical examination doctor, testified that in his opinion it is improper to combine the Tables because this would result in rating the claimant's arthritic condition twice (once in Table 37 and again in Table 41) and this constituted "stacking" or "piling on." Dr. S, in a request for clarification, was asked why he used "three methods" in assessing lower extremity impairment. Dr. S replied that in the AMA Guides "chapter 3.2i, page 84 it is emphasized that in some instances elements from both diagnostic and examination approaches could apply." Both the designated doctor and the hearing officer also cite section 3.2 page 3/75 of the AMA Guides to say that:

In general, only one evaluation should be used to evaluate a specific impairment. In some instances, however, as with the example on p. 77, a combination of two or three methods may be required.

While Dr. B is clear that he believes Dr. S erred in his approach neither Dr. B nor the carrier point to a provision in the AMA Guides which specifically precludes the designated doctor's approach. In fact Dr. B in his impairment evaluation stated "[t]here are a number of different ways to determine the [IR]." Dr. B goes on to state "the best rating is solely on the partial menisectomy [which] would only give a 1% impairment of the lower extremity. I am not sure if this is appropriate" (because the claimant has more impairment). Dr. B then uses Table 62 to "give us an 8% impairment I feel this is the most appropriate section to impair the patient under." Similarly, regarding the impairment from Table 41, Dr. S measured the claimant's varus to be mild and assessed a 4% impairment while Dr. B did not see a significant deficit in the claimant's varus and would have assessed a 0% impairment. The hearing officer also noted that Dr. S believed that the claimant's preexisting arthritis was aggravated by the compensable injury and that the need for surgery was "not reflective of the same condition."

It appears to us that there was a difference in medical judgment on how to rate the claimant's injury. Dr. S explained how he applied the separate Tables and while Dr. B might disagree with the designated doctor's approach, Dr. B agreed "there's many ways to interpret the Guides" and "there's no one correct way to interpret the Guides." Dr. S explained how he believed the arthritis was aggravated by the compensable injury and that the arthritis had not been double rated under Tables 37 and 62. That being the case, Section 408.125(c) provides that the report of the designated doctor shall have presumptive weight and the Texas Workers' Compensation Commission (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. The hearing officer accorded presumptive weight to Dr. S's reports and commented that the designated doctor has the discretion to utilize more than one Table to arrive at the IR.

The fact that the designated doctor expressed sympathy for the injured claimant does not constitute the great weight of other medical evidence or establish such bias to require that report to be disregarded. 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 determination on the disputed issue of the IR 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, 176 (Tex. 1986).

We affirm the hearing officer's decision and order.

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.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Edward Vilano
Appeals Judge