

APPEAL NO. 041424
FILED JULY 21, 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 (CCH) was held on May 19, 2004. The hearing officer resolved the disputed issue by deciding that the appellant's (claimant) impairment rating (IR) is 14% as reported by the designated doctor chosen by the Texas Workers' Compensation Commission (Commission). The claimant appeals, contending that the evidence shows that he has cervical radiculopathy and that the great weight of the medical evidence is contrary to the IR assigned by the designated doctor. The respondent (self-insured) requests that the hearing officer's decision be upheld, but complains about CCH procedures.

DECISION

We reverse the hearing officer's decision and render a decision that the claimant's IR is 15%.

We find no merit in the self-insured's complaints regarding the CCH procedures.

The parties stipulated that the claimant reached maximum medical improvement on October 30, 2002. The referral doctor assigned the claimant a 23% IR using the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including changes as issued by the American Medical Association prior to May 16, 2000) (AMA Guides 4th edition). The designated doctor assigned the claimant a 14% IR using the AMA Guides 4th edition. The major reason for the difference in the IRs was that the referral doctor found that the claimant had cervical radiculopathy, but the designated doctor found that the claimant did not have cervical radiculopathy. The designated doctor's opinion on that matter is supported by the findings of the carrier's required medical examination doctor. Section 408.125(e) provides that if the designated doctor is chosen by the Commission, 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.

The hearing officer found that the great weight of the other medical evidence did not overcome the presumptive weight to be accorded the report of the designated doctor. The hearing officer's finding 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). However, the designated doctor incorrectly used the Combined Values Chart (CVC) of the AMA Guides 4th edition in combining the regional impairments. The designated doctor determined that the claimant has a 5% whole-person (WP) impairment under Diagnosis-Related Estimates (DRE) Lumbosacral Category II, a 5% WP impairment under DRE Cervicothoracic Category II, and a 5% WP impairment under DRE Thoracolumbar Category II. Page 101 of the AMA Guides 4th edition under part 8 of Section 3.3f

regarding procedures and directions, instructs that the regional impairments are to be combined using the CVC to express the patient's total spine impairment. Combining the three regional spine impairments determined by the designated doctor using the CVC on page 322 of the AMA Guides 4th edition results in a combined value of 15%, not 14% as reported by the designated doctor. Essentially, the designated doctor made a clerical error in using the CVC, which we believe should be corrected on appeal to reflect the actual IR determined by the designated doctor when the regional spine impairments are correctly combined under the CVC. See Old Republic Insurance Company v. Rodriguez, 966 S.W.2d 208 (Tex. App.-El Paso 1998, no pet.). Accordingly, we reverse the hearing officer's decision that the claimant has a 14% IR and we render a decision that the claimant's IR is 15%.

The true corporate name of the insurance carrier is **STATE OFFICE OF RISK MANAGEMENT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

For service in person the address is:

**JONATHAN BOW, EXECUTIVE DIRECTOR
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Robert W. Potts
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Chris Cowan
Appeals Judge