

APPEAL NO. 050273
FILED MARCH 14, 2005

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 January 5, 2005. The hearing officer resolved the disputed issue by deciding that the respondent's (claimant) impairment rating (IR) is 27% as reported by the designated doctor chosen by the Texas Workers' Compensation Commission (Commission). The appellant (carrier) appealed, arguing that the hearing officer's determination of IR was so against the great weight and preponderance of the evidence that it is clearly wrong and manifestly unjust. The claimant responded, urging affirmance.

DECISION

We reverse the hearing officer's decision and render a new decision that the claimant's IR is 26%.

The parties stipulated that the claimant reached maximum medical improvement (MMI) on October 30, 2003. There were various IRs in evidence. A referral doctor assigned the claimant a 11% IR using 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 edition). However, the referral doctor opined that the claimant was at MMI on August 12, 2003. The designated doctor in his last amended rating after responding to a letter of clarification, assigned a 27% using the AMA Guides 4th edition. There was also an IR from a carrier required medical examination (RME) doctor who assigned the claimant a 13% IR. Both the carrier RME doctor and the designated doctor rated loss of range of motion in both the claimant's right elbow and shoulder. The carrier RME gave the claimant a rating for distal clavicle resection and axillary nerve impairment (motor) of the claimant's right shoulder and a rating for sensory and motor ulnar nerve impairment for the claimant's right elbow. The AMA Guides provide that impairment of the upper extremity secondary to entrapment neuropathy may be derived by measuring the sensory and motor deficits, as done by the carrier RME doctor. The AMA Guides provide that Table 16 is an alternative method to rate this impairment. The designated doctor assigned impairment for moderate severity of the ulnar neuropathy of the claimant's right elbow, under Table 16. The difference between impairment found by the carrier RME doctor and the designated doctor is based on a difference in medical opinion.

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.

However, the designated doctor incorrectly converted the upper extremity impairment assessed for the right elbow and right shoulder to whole person impairment prior to combining the two body parts to assess total whole person impairment. The AMA Guides provide in 3.1a on page 3/15 that the hand, wrist, elbow, and shoulder impairments are combined using the Combined Values Chart (CVC) to determine the total upper extremity impairment. The latter is converted to a whole person impairment using Table 3. When the upper extremity impairment for the right elbow and shoulder are combined and then the upper extremity impairment is converted to whole person impairment using Table 3 as required by the AMA Guides the IR is 26% rather than 27%.

The Appeals Panel has approved the correction by hearing officers of mere mathematical errors in IRs and indeed has itself made such corrections. See, e.g., Texas Workers' Compensation Commission Appeal No. 950472, decided May 8, 1995; Texas Workers' Compensation Commission Appeal No. 950838, decided July 5, 1995; and Texas Workers' Compensation Commission Appeal No. 011597, decided September 7, 2001. Since the impairment values assigned by the designated doctor can be correctly combined using the CVC and then converted to whole person impairment using Table 3 without resorting to medical judgment, and a correction of the IR involves a mere mathematical calculation, in accordance with our prior decisions on correction of errors of such type, we reverse the hearing officer's decision that the claimant has a 27% IR and we render a decision that the claimant's IR is 26%.

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

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Margaret L. Turner
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Veronica L. Ruberto
Appeals Judge