APPEAL NO. 051224
FILED JULY 21, 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 May 4, 2005. The hearing officer determined that the respondent's (claimant) impairment rating (IR) is 15% as assessed by the treating doctor and that the great weight of the other medical evidence overcomes the presumptive weight of the designated doctor's report.

The appellant (carrier) appeals, contending that the designated doctor's interpretation 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) was not improper, that the designated doctor had rated all levels of the spine and that the claimant's IR should be 10%. The claimant responds, urging affirmance.

DECISION

Reversed and a new decision rendered.

The parties stipulated that the claimant sustained a compensable injury (on _____) to his entire spine and that the claimant reached maximum medical improvement on April 3, 2003. A lumber MRI performed on August 9, 2002, showed canal stenosis at L4-5 and herniation at L3-4 impinging on the "L3 root." A cervical thoracic MRI performed on May 1, 2002, was normal for the cervical spine and with disc protrusions at T6-7 and T7-8.

The claimant was seen by (Dr. C), the designated doctor, on April 3, 2003. In a report of that date, Dr. C noted examination of the cervical, thoracic, and lumbar spine, gave diagnoses of "[l]umbar disc herniation, previous injury," and lumbar, cervical and thoracic "strain/sprain." Dr. C assessed a 5% IR for "[Diagnosis-Related Estimate (DRE)] Category II" without specifying what level of the spine was being rated.

The treating doctor referred the claimant to (Dr. G) for an IR assessment. In a report dated May 19, 2003, Dr. G assessed a 15% IR based on Cervicothoracic DRE II 5%, Thoracolumbar DRE II 5%, and Lumbosacral DRE II 5%. The treating doctor agreed with Dr. G's assessment.

Apparently in response to a letter asking for clarification, Dr. C in a letter dated September 16, 2003, stated that he agreed that the claimant's impairment "included the thoracolumbar which correctly assigned 5% WPI. However, the cervicothoracic should also be assigned 5% WPI per DRE II for a combined total of 10% WPI." Dr. C enclosed an amended Report of Medical Evaluation (TWCC-69) showing a 10% IR. The Texas Workers' Compensation Commission (Commission) subsequently sent Dr. C another

request for clarification dated November 26, 2003, specifically asking if the doctor's rating included the "cervical, thoracic, and the lumbar spine?" Dr. C replied by letter dated December 10, 2003, stating "in answer to your specific question regarding whether the cervical, thoracic and lumber spine are included in the 10% [IR], the answer is yet [sic yes]. This would include 5% for the cervicothoracic and 5% for the thoricolumbar [sic]."

Apparently, the Commission sent Dr. C another letter together with a letter and/or report from Dr. G asking for Dr. C's comment. Dr. C replied by letter dated September 28, 2004, stating:

> If one looks at the initial complaints there were mid lower back (thoracolumbar) and neck (cervicothoracic) pain. MRI reported nerve root impingement at L3 nerve root (thoracolumbar) and L4-5 disc spinal canal stenosis (thoracolumbar to lumbar). On my exam specifically there were no complaints of the neck and mild pain was shown to be mid lower back to mid thoracic, the definition of thoracolumbar. If [Dr. G] would prefer different semantics I could assign 0% for the cervical, no complaints, 5% for thoracolumbar and 5% for lumbosacral. However, based on my exam, the studies performed and his initial and current complaints I felt using cervicothoracic and thoracolumbar was more appropriate. In conclusion, my opinion remains 10% WPI and is supported by MRI, exam, complaints and even therapy notes.

Both parties and the hearing officer refer to page 3/95 of the Guides which comments that "[i]t is difficult to separate the cervical, thoracic, lumbar, and sacral spine regions functionally, because the signs related to the different regions commonly overlap." That section of the Guides concludes:

> For the purposes of this book, the cervical region may be considered to represent the cervicothoracic region, the thoracic region to represent the thoracolumbar region, and the lumbar region to represent the lumbosacral region.

Fairly clearly the designated doctor mislabeled the categories in his ratings, however the issue, as we see it, is whether the designated doctor rated the entire injury including the cervical spine and, if so, whether that rating was against the great weight of other medical evidence. *See* Sections 408.0041(e) and 408.125(c).

We believe fairly clearly that the designated doctor did consider and rate the entire spine including the cervical injury and rated the cervical injury with a 0% IR as reflected in his letters of clarification of December 10, 2003, and September 28, 2004. The hearing officer found that the "designated doctor misinterpreted the provisions of the Guides and failed to assign an impairment, pursuant to DRE Category II for all of the levels of the Claimant's back injured on _____." We hold that determination to be against the great weight and preponderance of the evidence. The designated

doctor, in two letters of clarification stated that he had rated the cervical spine and in his September 28, 2004, letter stated that his rating for the cervical injury was 0%. That rating is supported by the evidence which includes a normal cervical MRI on May 1, 2002, a notation of "no complaints of the neck" at the initial examination, no spasms or trigger points on palpation and negative Spurlings signs. Dr. G in an August 29, 2002, report notes a "resolving cervical . . . strain" and apparently bases his 5% cervical rating on some loss of motion which we interpret to be "nonuniform loss of range of motion." Dr. G's reports do not suggest any other "clinical signs of neck injury" (Table 73, page 3/110 of the AMA Guides). The hearing officer's determination that the designated doctor's report was against the great weight of the other medical evidence is not supported by the evidence.

Accordingly, we reverse the hearing officer's determination that the claimant's IR is 15% and render a new decision that the claimant's IR is 10% as assessed by the designated doctor's report which is not contrary to the great weight of the other medical evidence.

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

TREVA DURHAM
1000 HERITAGE CENTER CIRCLE
ROUND ROCK, TEXAS 78664-4463.

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Robert W. Potts
Appeals Judge

_____
Margaret L. Turner
Appeals Judge