APPEAL NO. 100394
FILED JUNE 3, 2010

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 February 25, 2010. With regard to the two unresolved issues, the hearing officer determined that the appellant (claimant) reached maximum medical improvement (MMI) on March 2, 2009 "with no permanent impairment" (a 0% impairment rating (IR)) per the report of (Dr. G). The parties stipulated that the compensable injury of _____, does not extend to a cervical strain/sprain with radiculitis or a cervical herniation with radiculopathy.

The claimant appealed, contending that Dr. G, a post designated doctor required medical examination (RME) doctor, had failed to document measured loss of range of motion (ROM) of the claimant's right wrist. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed in part and reversed and remanded in part.

The parties stipulated that on _____, the claimant sustained a compensable injury to his right upper extremity (UE), that the claimant's compensable injury does not extend to a cervical strain/sprain with radiculitis or a cervical herniation with radiculopathy, and that the designated doctor for the issues of MMI and IR was (Dr. V). The claimant testified how he fell and injured his right arm and wrist. In a report dated August 12, 2008, a doctor diagnosed a wrist sprain and wrist pain. The claimant had right wrist surgery on October 14, 2008. The post operative diagnoses were right wrist dorsal capsular tear, right wrist partial scapholunate ligament tear, and right wrist triangular fibrocartilage intact.

MMI

The hearing officer's determination that the claimant reached MMI on March 2, 2009, is supported by sufficient evidence and is affirmed.

IR

Section 408.125(c) provides that the report of the designated doctor shall have presumptive weight, and the Texas Department of Insurance, Division of Workers' Compensation (Division) shall base the IR on that report unless the preponderance of the other medical evidence is to the contrary, and that, if the preponderance of the medical evidence contradicts the IR contained in the report of the designated doctor chosen by the Division, the Division shall adopt the IR of one of the other doctors. 28 TEX. ADMIN. CODE § 130.1(c)(3) (Rule 130.1(c)(3)) provides that the assignment of an

IR for the current compensable injury shall be based on the injured employee's condition as of the MMI date considering the medical record and the certifying examination.

Dr. V, the designated doctor, initially, in a Report of Medical Evaluation (DWC-69) dated January 6, 2009, certified that the claimant had not reached MMI but was expected to reach MMI on April 6, 2009. In a subsequent DWC-69 and narrative dated June 15, 2009, Dr. V certified that date of MMI with a 36% IR. In response to a letter of clarification (LOC) dated August 22, 2009, Dr. V acknowledged the 36% IR was incorrect and on a DWC-69 certified MMI on June 15, 2009, with a 20% IR also attaching a worksheet. The worksheet is confusing because Dr. V includes measurements and impairments for the elbow and shoulder. Dr. V's calculations at the bottom of the worksheet are illegible. Dr. V's 20% IR was again challenged in a peer review report. In a response to another LOC dated November 11, 2009, Dr. V clarifies that she was rating only the right wrist and assessing a 9% UE impairment for loss of ROM and 28% UE impairment for "peripheral nerve system" combined for a 33% (should be 34%) UE impairment 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). Dr. V then converted the 33% (or 34%)[1] UE impairment to a 20% whole person IR using Table 3, page 3/20 of the AMA Guides. Dr. V's assessment of a 20% IR is not supported by the evidence. There is no documented medical evidence of a peripheral nerve injury and Dr. V does not give any explanation on how or why she assigned an impairment for the peripheral nerve system. An EMG/nerve conduction study of the right UE was requested in a report dated June 16, 2009. The EMG report is not in evidence but a peer review doctor, in a report dated September 24, 2009, comments "that the electrodiagnostic testing has documented only findings suggestive of mild carpal tunnel." The medical records in evidence do not support a UE rating for a peripheral nerve impairment. The hearing officer found that the preponderance of the medical evidence is contrary to Dr. V's reports. The hearing officer's finding is supported by the evidence and Dr. V's report cannot be adopted.

Dr. G, the post designated doctor RME doctor, in a DWC-69 and narrative report both dated March 2, 2009, certified MMI on that date and that the claimant does not have any permanent impairment. Dr. G recites the history of the injury and results of his physical examination. Dr. G does mention digital ROM in the physical exam portion of the exam however, he does not document any measurements related to ROM. In response to specific questions, Dr. G opines that the injury is a "'wrist sprain' with a partial thickness SL injury [which] may be related to the compensable injury." Dr. G further comments that the claimant's "'[ROM]' today is normal at the wrist and hand" but fails to document any measured ROM.

[1] We note that either a 33% or 34% UE impairment converts to a 20% whole person IR in Table 3, page 3/20 of the AMA Guides.

Rule 130.1(c)(3) provides in pertinent part that the doctor assigning the IR shall:

> (A) Identify objective clinical or laboratory findings of permanent impairment for the current compensable injury;
>
> (B) Document specific laboratory or clinical findings of an impairment;
>
> (C) Analyze specific clinical and laboratory findings of an impairment;
>
> (D) Compare the results of the analysis with the impairment criteria and provide the following:
>
> > (i) A description and explanation of specific clinical findings related to each impairment, including zero percent (0%) [IRs]; and
> >
> > (ii) A description of how the findings relate to and compare with the criteria described in the applicable chapter of the AMA Guides. The doctor's inability to obtain required measurements must be explained.
>
> (E) Assign one whole body [IR] for the current compensable injury.

We read Rule 130.1(c)(3)(D)(i) requiring a description and explanation of specific clinical findings related to each impairment to include ROM measurements, where applicable, in determining the impairment. In this case, Dr. G failed to document in his physical examination any measured ROM or otherwise explain how he determined "normal" ROM at the wrist and hand. Accordingly, Dr. G's IR cannot be adopted. We reverse the hearing officer's determination that the claimant has "no permanent impairment [0% IR] . . . per the report of [Dr. G]." Because there is no other IR in evidence that can be adopted we remand the case back to the hearing officer.

REMAND INSTRUCTIONS

The designated doctor in this case is Dr. V. The hearing officer is to determine whether Dr. V is still qualified and available to be the designated doctor, and if so, request that Dr. V rate only the compensable injury in accordance with the AMA Guides based on the claimant's conditions as of the March 2, 2009, date of MMI considering the medical record, the certifying examination and the rating criteria in the AMA Guides and legibly document the clinical findings. The hearing officer is to provide the LOC and the designated doctor's response to the parties and allow the parties an opportunity to respond and then make a determination regarding the IR. If Dr. V is no longer qualified and available to serve as the designated doctor then another designated doctor is to be appointed pursuant to Rule 126.7(h) to determine the claimant's IR.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Division, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. *See* Appeals Panel Decision 060721, decided June 12, 2006.

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

RON O. WRIGHT, PRESIDENT
6210 EAST HIGHWAY 290
AUSTIN, TEXAS 78723.

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Veronica L. Ruberto
Appeals Judge

_____
Margaret L. Turner
Appeals Judge