

APPEAL NO. 110106
FILED MARCH 28, 2011

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 December 29, 2010. The hearing officer resolved the disputed issue by deciding that the respondent's (claimant) impairment rating (IR) is 15%. The appellant (carrier) appealed, disputing the hearing officer's determination of the IR. The appeal file does not contain a response from the claimant to the carrier's appeal.

DECISION

Reversed and rendered.

The parties stipulated that the claimant sustained a compensable injury on _____; the Texas Department of Insurance, Division of Workers' Compensation (Division) appointed (Dr. J) as the designated doctor requesting that he determine the claimant's date of maximum medical improvement (MMI) and IR; and the claimant reached MMI on April 15, 2010, as certified by Dr. J and (Dr. I) the carrier's required medical examiner (RME). The claimant testified that he injured his left hand at work while cutting with a table saw. He was taken to the emergency room. The initial medical records reflect that the claimant had a traumatic left thumb partial amputation and left index finger laceration. The medical records reflect that the claimant had a laceration to the radial side of his index finger which appeared superficial but contaminated and that he is missing the end of his left thumb, the nail and nail plate are completely removed and bone is exposed dorsally. Further, the records indicate he has some flexion and extension of his interphalangeal (IP) joint. The claimant testified that he is left hand dominant.

Section 408.125(c) provides that the report of the designated doctor shall have presumptive weight, and the 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 and the doctor assigning the IR shall: (B) document specific laboratory or clinical findings of an impairment.

The claimant was examined by the designated doctor, Dr. J, on June 11, 2010, noting he was being evaluated for his left index finger and left thumb and that the purpose of the examination was to determine MMI and IR. Dr. J performed range of motion (ROM) testing on the claimant's left and right hands, specifically measuring each digit. However, Dr. J noted that the claimant had total amputation of his left thumb. Dr.

J noted in his narrative report that he performed a 2-point discrimination sensory test that resulted in “[p]artial losses of the index finger ([u]lnar=10% plus [r]adial=15%=25% [t]otal) and thumb (50% total loss because of amputation).” Dr. J did not include the specific measurements of the 2-point discrimination test in his narrative. Dr. J noted in his diagnosis that the claimant had a complete amputation of the thumb. In a section of his narrative entitled IR Summary and Calculations, Dr. J noted that the “ROM deficits combine to a total hand [IR] of 28% which converts to a 25% [upper extremity (UE)], which then converts to a whole person [IR] of 15%.” In his narrative report, Dr. J did not identify a specific measurement for the claimant’s left thumb but rather noted that there was a total amputation of the left thumb. In the Report of Medical Evaluation (DWC-69), Dr. J noted he used 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 certified that the claimant reached MMI on April 15, 2010, with a 15% IR.

As previously noted, the medical records do not support Dr. J’s assertion that the claimant had a total amputation of his left thumb. The claimant acknowledged at the CCH that only part of his thumb was cut off. Dr. J based his IR in part on a total amputation of the left thumb but the medical records in evidence and the claimant’s testimony reflect that the claimant did not have a total amputation of his left thumb. Further, there is some indication in his narrative that Dr. J assessed impairment for sensory loss. Dr. J noted that the claimant had sensory deficits, but his narrative report did not include measurements of the sensory deficits performed in his physical examination. Therefore, Dr. J’s certification of IR cannot be adopted. See Appeals Panel Decision 100394, decided June 3, 2010.

The claimant was examined by Dr. I, the carrier RME, on August 4, 2010. Dr. I noted that the ROM of the claimant’s right and left index, middle, ring and little fingers was within normal range. Dr. I noted that a 4 mm stump of the left thumb was present at the IP joint consistent with a 40% amputation of the left thumb. Further, Dr. I in his narrative, stated that “[s]ensation, position sensation and vibration sensation were normal bilaterally.” In his initial narrative, Dr. I stated that 40% impairment of the left thumb converts to 8% impairment of the hand which converts to 7% of the UE and 4% whole person impairment. Subsequently, Dr. I submitted an amended DWC-69 noting that after reading a peer review report he realized he had incorrectly used the conversion tables when he converted the impairment assessed for 40% amputation of the left thumb in his initial DWC-69 and certified that the claimant reached MMI on April 15, 2010, with an 8% IR.

Figure 7 on page 3/24 of the AMA Guides provides that amputation of the thumb just above the IP joint results in 40% impairment. 40% impairment of the thumb results in 16% impairment of the hand using Table 1 on page 3/18 of the AMA Guides, which results in 14% impairment of the UE using Table 2 on page 3/19 of the AMA Guides. 14% impairment of the UE converts to 8% whole person impairment using Table 3 on page 3/20 of the AMA Guides. Dr. I’s narrative indicates that he considered both ROM

of the left index finger and loss of sensation of the claimant's left index finger and thumb but found no impairment should be assessed.

The hearing officer notes in his discussion that Dr. I rated only the thumb amputation. However, Dr. I's report includes a diagnosis of saw injury to the left thumb and index finger and specifically notes that the ROM for the left index finger was within normal limits and that the sensation was normal bilaterally. For the reasons discussed above, the IR certified by the designated doctor, Dr. J cannot be adopted. Dr. I's assigned IR is the only other IR in 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 8%.

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.**

Margaret L. Turner
Appeals Judge

CONCUR:

Cynthia A. Brown
Appeals Judge

Thomas A. Knapp
Appeals Judge