APPEAL NO. 131251
FILED JULY 15, 2013

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 April 24, 2013, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) reached maximum medical improvement (MMI) on April 30, 2012, per [Dr. M], the designated doctor appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division); and that the claimant's impairment rating (IR) is 5% per Dr. M. The claimant appealed the hearing officer's determinations of MMI and IR. The respondent (self-insured) responded, urging affirmance.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated that the claimant sustained a compensable injury on [date of injury], that consisted of a lumbar strain, left wrist sprain, and carpal tunnel syndrome. The claimant testified that she was injured at work on [date of injury], when she slipped and fell on her left arm and lower back.

MMI

The hearing officer's determination that the claimant reached MMI on April 30, 2012, per Dr. M, the designated doctor, 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 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. M examined the claimant on April 30, 2012, and in a Report of Medical Evaluation (DWC-69) and narrative report dated that same date certified that the claimant reached clinical MMI on April 30, 2012, with a 5% IR. In his narrative report

Dr. M assessed the claimant as status post carpal tunnel surgery, and that the claimant did not have any evidence of significant lumbar spine pain. It was undisputed that the claimant underwent left carpal tunnel release late September 2011.

Regarding the claimant's IR, Dr. M stated that the claimant only had sensory deficits, and gave the following explanation:

Using [T]able 11 [page 3/48 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)] [the claimant] was given a [G]rade of 3 (30%), and using [T]able 15 gives a maximum sensory impairment deficit of 38% for below mid-forearm of the median. 3% x 30% gives a 9% [upper extremity (UE)] impairment. When converted to [whole person impairment (WPI)] using [T]able 3 gives her a 5% WPI.

The AMA Guides provide on page 3/46:

> For each structure involved, impairment percents are calculated by multiplying the maximum impairment value of the nerve structure due to motor or sensory deficit (Tables 13, 14, and 15 [pages 3/51, 3/52, and 3/54]) by the estimated grade of severity of the sensory or motor loss (Tables 11 and 12 [pages 3/48 and 3/49]). When both functions are involved, the impairment percents are *combined* using the Combined Values Chart ([page] 322).

In the case on appeal, Dr. M used Table 11 on page 3/48 of the AMA Guides to assess the claimant with a Grade 3 for 30%, and used Table 15 on page 3/54 to assess a maximum sensory impairment deficit of 38% for below mid-forearm of the median. Dr. M's methodology is in accordance with the AMA Guides. However, Dr. M multiplied 3% times 30% for a 9% UE impairment. This is incorrect. The AMA Guides provide that Dr. M should have multiplied the 30% based on Grade 3 with the 38% maximum sensory impairment. Multiplying 30% by 38% results in 11.4% UE impairment. Table 3 on page 3/20 provides that an 11% UE impairment and a 12% UE impairment both convert to a 7% WPI.

The Appeals Panel has held that a mathematical correction to a certification of an IR may be made when doing so simply corrects an obvious mathematical error and does not involve the exercise of medical judgment as to what the proper figures were. See Appeals Panel Decision 101949, decided February 22, 2011. In this case Dr. M's 5% IR is incorrect because he multiplied the wrong numbers to determine the claimant's IR; specifically, Dr. M took a 30% based on Grade 3 in Table 11, page 3/48, and multiplied that 30% by 3%, rather than the 38% maximum sensory impairment he

assessed under Table 15 on page 3/54. Under the facts of this case we consider Dr. M's 5% IR a mathematical error that can be corrected without involving the exercise of medical judgment in correcting that error. The hearing officer found that Dr. M's certification of MMI and IR was not contrary to a preponderance of the evidence, and after a mathematical correction, that finding is supported by the evidence. As noted above, using Dr. M's calculation of 30% based on Grade 3 multiplied by 38% for maximum sensory impairment results in a 7% IR. Accordingly, we reverse the hearing officer's decision that the claimant has a 5% IR and we render a new decision that the claimant's IR is 7%.

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

CITY SECRETARY
[ADDRESS]
[CITY], TEXAS [ZIP CODE].

Carisa Space-Beam
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge