

APPEAL NO. 010761-S

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 March 9, 2001, in _____, Texas, with (hearing officer) presiding. The hearing officer resolved the disputed issues by determining that the first certification of maximum medical improvement (MMI) and impairment rating (IR) assigned by Dr. C did not become final under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)); that the appellant (claimant) reached MMI on August 18, 2000; and that the claimant has an 8% IR. The claimant appealed the hearing officer's decision that her IR is 8%. No response was received from the carrier. There is no appeal of the hearing officer's decision that the first certification of MMI and IR assigned by Dr. C did not become final under Rule 130.5(e) and that the claimant reached MMI on August 18, 2000.

DECISION

The hearing officer's decision that the claimant has an 8% IR is reversed and the case is remanded to the hearing officer.

Section 408.125(e) provides that if the designated doctor is chosen by the Texas Workers' Compensation Commission (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, and that, if the great weight of the medical evidence contradicts the IR contained in the report of the designated doctor chosen by the Commission, the Commission shall adopt the IR of one of the other doctors. Section 408.124(b) provides that for determining the existence and degree of an employee's impairment, the Commission shall use the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides).

The claimant sustained a compensable injury when she slipped and fell at work on _____. Dr. C examined the claimant at the carrier's request in March 2000 and Dr. C certified that the claimant reached MMI on March 16, 2000, with a 7% IR. Dr. C assigned impairment for a specific disorder of the lumbar spine. Dr. C reported that the claimant did not meet the straight leg raise (SLR) validity test for flexion and extension range of motion (ROM) and that the claimant has normal lateral flexion ROM.

The claimant's treating doctor, Dr. G, a chiropractor, certified that the claimant reached MMI on August 18, 2000, with a 17% IR. Dr. G assigned impairment of 5% for a specific disorder of the lumbar spine and 13% for abnormal lumbar ROM. The impairment for ROM consisted of 4% for flexion, 5% for extension, 1% for left lateral flexion, and 3% for right lateral flexion.

The Commission chose Dr. B, a chiropractor, as the designated doctor and Dr. B examined the claimant and certified that the claimant reached MMI on August 18, 2000,

with a 16% IR. Dr. B assigned impairment of 7% for a specific disorder of the lumbar spine and 10% for abnormal lumbar ROM. The impairment for ROM consisted of 4% for flexion, 5% percent for extension, and 1% percent for left lateral flexion.

Dr. CO reviewed Dr. B's report at the carrier's request but did not examine the claimant. Dr. CO reported that Dr. B erred in applying the SLR validity test because Dr. B had noted that the maximum true lumbar flexion angle was 60 degrees when in fact it was 62 degrees and that caused Dr. B to fail to use the 34-degree sacral ROM that corresponded to the maximum true lumbar flexion angle when applying the SLR validity test. Dr. CO opined that when the correct sacral ROM measurements from Dr. B's report are used, the claimant did not meet the SLR validity test. Dr. CO wrote that the only ROM that survived all of the validity criteria was the 1% Dr. B assigned for left lateral flexion. Dr. CO opined that when the AMA Guides are properly applied to the information in Dr. B's report, the claimant would have impairment of 7% for a specific disorder of the lumbar spine and 1% for abnormal ROM, which corresponds to an 8% IR.

The hearing officer found that Dr. B, the designated doctor, did not properly apply the SLR validity test and that test was invalid; that when Dr. B's report is corrected for mathematical errors, the claimant's correct IR is 8%; that the corrected IR of 8% is entitled to presumptive weight; and that the IR assigned by Dr. B as corrected is not contrary to the great weight of the other medical evidence. The hearing officer concluded that the claimant's IR is 8%. The claimant states that there is no authority for the criticism mounted against the designated doctor's report and requests that the hearing officer's decision reducing the claimant's IR to 8% be reversed and rendered and that the claimant receive whatever further relief to which she may be justly entitled.

In Commission Question/Resolution Log (QRL) 01-13, with an answer date of February 6, 2001, the question posed was "What is the process for selecting sacral ROM measurements for lumbar flexion and extension angles and validating them under the SLR?" The resolution set forth in the QRL is as follows:

The general method is set out on page 90 of the AMA Guides. To ensure consistent results, the following procedures should be adhered to:

- a) The examiner should ensure that skin marks for placement of the two inclinometers be placed over the T12 spinous process and the sacrum.
- b) When performing the flexion measurement, if both inclinometers do not read zero when the examined person returns to the neutral position, then the inclinometers should be reset to zero with the spine in the neutral position, and the movement repeated.
- c) When performing the flexion and extension measurements, the examiner must take at least three consecutive measurements which

fall within plus or minus 5 degrees or 10% (whichever is greater) for the measurements to be considered consistent. Measurements should be repeated up to six times until consistency for consecutive measurements is attained.

- d) When performing the SLR measurements, be mindful that the SLR is a passive-assisted motion. The examiner must take at least three consecutive measurements which fall within plus or minus 5 degrees or 10% (whichever is greater) for the measurements to be consistent. Measurements should be repeated up to six times until this consistency is attained.
- e) Once consistency is attained for SLR and flexion and extension, identify the maximum true flexion angle and maximum true extension angle. Then add the sacral ROM angle that corresponds to the maximum flexion angle to the sacral ROM angle that corresponds to the maximum extension angle and compare those values to the maximum SLR measurement on the tightest side. If the SLR exceeds total sacral (hip) motion by more than 10 degrees, the test is invalid and should be repeated. Consult Abnormal Motion section of Table 56 to determine impairment of the whole person.

In the instant case, Dr. B did not correctly identify the maximum true flexion angle and thus did not use the sacral ROM angle that corresponded to the maximum true flexion angle when adding the sacral ROM angles. However, Dr. B's lumbar ROM worksheet records only one measurement for the right SLR and only one measurement for the left SLR. Since it appears from Dr. B's ROM worksheet that Dr. B did not perform at least three consecutive SLR measurements or otherwise comply with the requirements of paragraph (d) of QRL 01-13, we are unable to say whether the SLR validity test was or was not met because the procedures for applying the SLR validity test were not completed. Since Dr. B did not complete ROM testing and did not explain why ROM testing was not completed, we hold that the hearing officer erred in determining that the claimant has a corrected IR of 8%. We reverse the hearing officer's decision that the claimant's IR is 8% and we remand the case to the hearing officer for the hearing officer to request Dr. B to perform ROM testing on the claimant in accordance with the procedures set out in QRL 01-13 and for the hearing officer to send a copy of that QRL to Dr. B for his use in complying with the request.

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 new request for review not later than 15 days after the date on which the new decision is

received from the Commission's Division of Hearings pursuant to Section 410.202. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

Robert W. Potts
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Michael B. McShane
Appeals Judge