APPEAL NO. 021860-s
FILED SEPTEMBER 11, 2002

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 June 25, 2002. With respect to the single issue before him, the hearing officer determined that the respondent's (claimant) impairment rating (IR) is 15% as certified by the designated doctor selected by the Texas Workers' Compensation Commission (Commission). In its appeal, the appellant (self-insured) argues that the designated doctor's IR is not entitled to presumptive weight because 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) (4th edition) rather than the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (3rd edition). The appeal file does not contain a response to the self-insured's appeal from the claimant.

DECISION

Affirmed.

The facts in this case are largely undisputed. The parties stipulated that the claimant sustained a compensable injury on _____, which necessitated a total right knee replacement. The claimant's date of statutory maximum medical improvement (MMI) is September 3, 2001. The first examination to determine the claimant's MMI and IR was conducted on December 20, 2001, by Dr. L. Dr. L calculated the claimant's IR using the 4th edition of the AMA Guides and completed his Report of Medical Evaluation (TWCC-69), certifying that the claimant's IR was 15%, on December 26, 2001. Dr. M was selected by the Commission to serve as the designated doctor. Dr. M examined the claimant on February 26, 2002, and completed a TWCC-69 on the same day, certifying that the claimant reached MMI on September 3, 2001, with an IR of 15%. Dr. M also used the 4th edition of the AMA Guides to assess the claimant's IR.

At the hearing and on appeal, the self-insured argues that the designated doctor should have used the 3rd edition of the AMA Guides to determine the claimant's IR. The resolution of that argument is dependent upon the interpretation of several provisions of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.1 (Rule 130.1). Rule 130.1(b)(3) states that a "certification of MMI is a finding made by an authorized doctor that an injured employee has reached MMI as defined in subsection (b)(1) of this section." In this instance, the designated doctor's certifying examination was conducted after October 15, 2001. Thus, Rule 130.1(c)(2)(B) establishes what version of the AMA Guides should be used to determine the claimant's IR. The self-insured argues that Rule 130.1(c)(2)(B)(ii) applies in this instance and that it dictates that the 3rd edition of the AMA Guides should have been used to determine the claimant's IR. Rule

130.1(c)(2)(B)(ii) says that the appropriate edition of the AMA Guides to use for certifying examinations conducted on or after October 15, 2001 is:

> the third edition, second printing, dated February, 1989 if, at the time of the certifying examination, there is a certification of MMI by a doctor pursuant to subsection (b) of this section made prior to October 15, 2001, which has not been previously withdrawn through agreement of the parties or previously overturned by a final decision.

The hearing officer determined that there was not a certification of MMI as that phrase is defined in Rule 130.1(b)(3) prior to October 15, 2001, because there was no "finding made by a doctor." The self-insured maintains that there was a certification MMI in this instance as of September 3, 2001, the date of statutory MMI. Specifically, the carrier argues that "the certification of MMI is merely a perfunctory duty made by the first examining doctor after statutory MMI has already occurred, because the MMI date is set by statute. . . ." We cannot agree with the self-insured's assertion that there is a certification of MMI simply because the date of statutory MMI has passed. By their very terms, Rules 130.1(b)(3) and 130.1(c)(2)(B)(ii) require a written finding by a doctor that the injured employee has reached MMI. There was no such finding of MMI in this case until December 26, 2001, when Dr. L completed his TWCC-69, certifying MMI and assigning a 15% IR. As such, the hearing officer correctly determined that in accordance with Rule 130.1(c)(2)(B)(i), the appropriate edition of the AMA Guides for the designated doctor to use at his certifying examination of February 26, 2002, was the 4th edition.

The hearing officer's decision and order are affirmed.

The true corporate name of the self-insured is **(SELF-INSURED)** and the name and address of its registered agent for service of process is

TL
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

_____
Elaine M. Chaney
Appeals Judge

CONCUR:

_____
Thomas A. Knapp
Appeals Judge

_____
Robert W. Potts
Appeals Judge