

APPEAL NO. 022504-s
FILED NOVEMBER 12, 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 (CCH) was held on September 10, 2002. The hearing officer determined that the respondent's (claimant herein) impairment rating (IR) was 16% based upon the report of the designated doctor selected by the Texas Workers' Compensation Commission (Commission). The appellant (carrier herein) files a request for review, arguing that the designated doctor had failed to properly use 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) in arriving at his IR, and that properly applying the AMA Guides to the designated doctor's loss of range of motion (ROM) measurements the claimant's IR is 14% as explained by the carrier peer review doctor. The claimant responds, arguing that the designated doctor properly applied the AMA Guides, that the hearing officer did not err in giving presumptive weight to the IR of the designated doctor, and that the opinion of the peer review doctor should not be given any weight.

DECISION

Reversed and remanded.

The question before us is one of first impression involving the interpretation of the AMA Guides. Thankfully, the parties, the doctors, and the hearing officer have all done an excellent job in providing relevant information to assist us in deciding this case.

The facts of the case are largely undisputed. The claimant sustained a compensable left wrist distal radius fracture on _____, which required surgery and external fixation. It was stipulated by the parties that the claimant reached maximum medical improvement on March 15, 2002, and that Dr. P was the Commission-selected designated doctor. Dr. P certified on a Report of Medical Evaluation (TWCC-69) dated March 15, 2002, that the claimant's IR was 16%. In his associated narrative Dr. P explained how he arrived at this rating as well as giving the measurements he obtained during the course of his examination.

The carrier requested that Dr. Y perform a peer review of Dr. P's narrative report and IR certification. Dr. Y in a report of April 1, 2002, stated that Dr. P's narrative and IR were well-crafted, but stated that Dr. P's documentation supported an IR of 14%, not of 16%. Dr. Y stated that this was because the AMA Guides provided in the instructions for rating radial and ulnar deviation that the measurements should be rounded to the nearest 10 degrees. Dr. Y stated that if Dr. P's measurement of radial and ulnar deviation were rounded to the nearest 10 degrees the claimant's IR would be 14%.

The Commission sent Dr. Y's peer review to Dr. P, and Dr. P issued an addendum dated April 22, 2002, in which he stated he disagreed with Dr. Y and believed that the claimant's IR was properly assessed at 16%. Dr. P stated that, while the AMA Guides permitted rounding, they did not require it. Further, Dr. P stated that there was certainly no need to round to the nearest 10 degrees because the table for impairment for radial and distal deviation is set out in increments of 5 degrees.

Dr. Y wrote a response to Dr. P's addendum in which he stated that the AMA Guides specifically provided that a measurement may be rounded to the interval on the table or figure involved unless the AMA Guides gave other directions. Dr. Y stated that the AMA Guides did give other directions regarding the rating of distal and radial deviations and those directions provided for rounding to the nearest 10 degrees. Dr. Y also testified by telephone at the CCH. During his testimony Dr. Y reiterated his earlier position. Under questioning from the hearing officer concerning the purpose of the rounding directions for rating ulnar and radial deviation, Dr. Y stated that while he could not speak for the authors of the AMA Guides, he believed that the authors of the AMA Guides might have included this provision because any deviation of less than 10 degrees might not significantly affect functionality.

The hearing officer noted in his decision that neither party argued that using Dr. P's measurements as Dr. P did would have resulted in anything other than a 16% IR or that rounding Dr. P's measurement to the nearest 10 degrees as Dr. Y suggested would have resulted in anything other than a 14% IR. Nor does either party argue this on appeal. The hearing officer stated that the conflict between the directions in the AMA Guides (that the measurements be rounded to the nearest 10 degrees and use of 5-degree intervals in the associated figure) created an ambiguity in how to apply the AMA Guides in this case. The hearing officer further stated that this ambiguity rendered our decision in Texas Workers' Compensation Commission Appeal No. 982038, decided October 1, 1998, inapplicable to the present case. The hearing officer stated that he would resolve the ambiguity in the AMA Guides in favor of the opinion of the designated doctor in this case and found that the claimant's IR is 16%.

The 1989 Act requires that any determination of IR be based upon the AMA Guides. Section 408.124(c); Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE §130.1 (Rule 130.1). Failure by a designated doctor to properly follow the AMA Guides has led to reversal of a decision on IR based upon the designated doctor's report. See Texas Workers' Compensation Commission Appeal No. 93296, decided May 28, 1993; Texas Workers' Compensation Commission Appeal No. 93769, decided October 11, 1993; Texas Workers' Compensation Commission Appeal No. 931008, decided December 16, 1993; and Texas Workers' Compensation Commission Appeal No. 94181, decided March 24, 1994. Where there are sufficient questions concerning whether or not a designated doctor had properly followed the AMA Guides, we have remanded to allow the hearing officer to seek clarification from the designated doctor. See Texas Workers' Compensation Commission Appeal No. 93600, decided August 31, 1993; Texas Workers' Compensation Commission Appeal No. 931085, decided January 4, 1994; and

Texas Workers' Compensation Commission Appeal No. 931099, decided January 11, 1994.

Thus we must first determine whether or not Dr. P properly followed the AMA Guides in certifying the claimant's impairment. This question in turn hinges on whether or not the AMA Guides require that in rating radial and ulnar deviation the measurements must be rounded to the nearest 10 degrees. On page 3/37 of the AMA Guides the directions for rating radial and ulnar deviation provide that the measurements be rounded to the nearest 10 degrees. However, Figure 29 on page 3/38, which is used to rate impairment based upon these measurements, uses increments of 5 degrees. This conflict is resolved by looking to the general directions on interpolating, measuring, and rounding off which are found on page 2/9 of the AMA Guides and which provide as follows in relevant part:

In general, an impairment value that falls between those appearing in a table or figure of the *Guides* may be adjusted or interpolated to be proportional to the interval of the table or figure involved, unless the book gives other directions.

Here the AMA Guides do give other directions than applying the values given in Figure 29 on page 3/38. Those directions provide that the measurements be rounded to the nearest 10 degrees. Using the language cited above from page 2/9 of the AMA Guides, these directions control over Figure 29 and should have been applied in calculating the claimant's IR.

Because the designated doctor did not properly apply the AMA Guides in assessing the claimant's IR, we must reverse the decision of the hearing officer adopting the designated doctor's IR. Accordingly we remand the case to the hearing officer and direct him to seek an opinion from the designated doctor consistent with our holding in this case. We remand rather than render a new decision because it would be inappropriate to render a decision based upon an IR certification from a doctor who did not examine the claimant and because the designated doctor, as he recognized in his addendum, has the authority under the general rounding rules on page 2/9 of the AMA Guides to round the entire IR to the nearer of the two nearest values ending in 0 or 5.

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 Commission's Division of Hearings, 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 Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

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

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Michael B. McShane
Appeals Panel
Manager/Judge