

APPEAL NO. 151158-s
FILED AUGUST 4, 2015

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 March 18, 2015, with the record closing on May 22, 2015, in Fort Worth, Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the sole disputed issue by deciding that the appellant's (claimant) impairment rating (IR) is 9%.

The claimant appealed the hearing officer's determination, contending that the hearing officer's determination is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. The respondent (carrier) responded, urging affirmance of the hearing officer's determination.

DECISION

Affirmed.

The parties stipulated in part that the claimant sustained a compensable injury on (date of injury), the accepted compensable injury is a left shoulder sprain/strain, left shoulder anterior labral tear, left shoulder partial detachment of the anteroinferior labrum and left shoulder partial detachment of the posterior horn; and that the claimant reached maximum medical improvement (MMI) on the statutory MMI date of September 28, 2014, as certified by (Dr. E), the designated doctor, and (Dr. G), the claimant's treating doctor. The claimant testified he injured his left shoulder on (date of injury), when he repeatedly lifted a 200-pound gate and operated a pallet jack.

The hearing officer determined that the claimant's IR is 9% as certified by (Dr. S), a subsequently-appointed designated doctor to determine the claimant's IR. There is sufficient evidence to support the hearing officer's determination; therefore, we affirm the hearing officer's determination that the claimant's IR is 9%. A written decision is being issued in this case to clarify the use of Table 27, Impairment of the Upper Extremity (UE) After Arthroplasty of Specific Bones or Joints, 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) in assessing impairment for a distal clavicle resection arthroplasty received as treatment for the compensable injury.

It is undisputed by the parties that the claimant underwent a distal clavicle resection arthroplasty for the compensable injury on (date of injury). The claimant contended at the CCH and on appeal that the IR assigned by Dr. G, his treating doctor,

is the correct IR in this case. The carrier contended at the CCH that the IR assigned by Dr. E, the first designated doctor, is the correct IR. Both parties agreed at the CCH that the difference between the IRs assigned by Dr. G and Dr. E was a 10% UE impairment assigned for the distal clavicle resection arthroplasty under Table 27 on page 3/61 of the AMA Guides.

Dr. G examined the claimant on December 1, 2014, and certified that the claimant reached MMI on the stipulated date of September 28, 2014, with a 9% IR.¹ As correctly noted by the hearing officer in the Discussion portion of the decision, Dr. G stated in his report that he rated the diagnosis of “unspecified derangement of joint, shoulder region” and sprain/strain of shoulder. This condition was neither stipulated to by the parties as being compensable, nor was this condition actually litigated by the parties as being compensable. The hearing officer was correct in stating that Dr. G’s certification is not adoptable.

Dr. E, the prior designated doctor, examined the claimant on November 10, 2014, and certified that the claimant reached MMI on the stipulated date of September 28, 2014, with a 4% IR. Dr. E explained in his narrative report that he assigned 4% impairment based on loss of range of motion (ROM) of the claimant’s left shoulder. Dr. E also explained in his report that he did not assign an impairment under Table 27 of the AMA Guides for the claimant’s distal clavicle resection arthroplasty because:

[c]urrent guidance from the [Texas Department of Insurance, Division of Workers’ Compensation (Division)] on this from impairment from Table 27, though, is to consider the final result of the injured worker and if they have a relatively good result, then the examiner would probably not be advised to assign impairment for the distal clavicle arthroplasty since the procedure was not intended to impair them and a good result means that they were not impaired, subverting any reasonable application of that impairment from that table. But if the final result of such surgery was relatively adverse, such as instability or other factors, then it would be reasonable to assign that 10% [UE] impairment. In this case, the examinee has a relatively normal examination except for minor loss in [ROM], which is accounted for by the [ROM] impairment. As such, assignment for the distal clavicle arthroplasty is not seen as reasonable here.

The hearing officer noted in his discussion that Table 27 of the AMA Guides does not give the guidance as stated by Dr. E; rather, Table 27 “simply gives an [IR] value for

¹ As noted by the hearing officer, the Report of Medical Evaluation (DWC-69) from Dr. G assigned a 10% IR. However, in evidence is an amended DWC-69 from Dr. G that assigned a 9% IR.

different levels of arthroplasty, with 10% being given for a distal clavicle arthroplasty.” The hearing officer then stated in part that because Dr. E did not give a rating for the distal clavicle resection arthroplasty, the claimant was sent to a new designated doctor to address the claimant’s IR.

Dr. S was subsequently appointed as the designated doctor to determine the claimant’s IR. Dr. S determined that the claimant reached MMI on the stipulated date of September 28, 2014, with a 9% IR. Dr. S assessed 6% UE impairment for loss of ROM of the claimant’s left shoulder, and 10% UE impairment for the distal clavicle resection arthroplasty under Table 27 of the AMA Guides, for a combined UE impairment of 15%, which converts to 9% whole person impairment under Table 3 on page 3/20 of the AMA Guides. The hearing officer found that Dr. S’s IR is not contrary to the preponderance of the evidence, and therefore determined that the claimant’s IR is 9%.

The question in this case is whether a distal clavicle resection arthroplasty received as treatment for the compensable injury results in a 10% UE impairment under Table 27 of the AMA Guides.

The AMA Guides provide on page 3/58 the following:

It is emphasized that impairments from the disorders considered in this section [3.1m Impairment Due to Other Disorders of the UE] are usually estimated by using other criteria. The criteria described in this section should be used only when the other criteria have not adequately encompassed the extent of the impairments.

Table 27, Impairment of the UE After Arthroplasty of Specific Bones or Joints, falls under Section 3.1m. When considering the language on page 3/58 in isolation it would appear that a distal clavicle resection arthroplasty would receive a 10% UE rating under Table 27 only if the other criteria provided in the AMA Guides have not adequately rated the impairment. However, the AMA Guides also provide on page 3/62 the following specifically regarding arthroplasty of a joint:

In the presence of decreased motion, motion impairments are derived separately (Sections 3.1f through 3.1j) and *combined* with arthroplasty impairments using the Combined Values Chart (p. 322).

The language on page 3/62 clearly provides that impairment for arthroplasty procedures is to be derived by combining loss of ROM, if any, with arthroplasty impairment under Table 27.

The language contained on page 3/58 is ambiguous, whereas the language on page 3/62 provides more clear instruction regarding the rating of arthroplasty procedures. Therefore, we hold that impairment for a distal clavicle resection arthroplasty that was received as treatment for the compensable injury results in 10% UE impairment under Table 27, which is then combined with ROM impairment, if any, as provided by the AMA Guides. We note that the manner of assessing loss of ROM, including but not limited to whether or not loss of ROM should be invalidated or the comparison of ROM of a contralateral joint, remains within the discretion of the certifying doctor. See Appeals Panel Decision (APD) 091820, decided January 13, 2010, in which the Appeals Panel reversed the hearing officer's IR determination because the certifying doctor failed to rate the entire compensable injury when he failed to combine ROM impairment with arthroplasty impairment under Table 27 as provided by the AMA Guides; and APD 132926, decided February 13, 2014, in which the Appeals Panel rejected an MMI/IR certification in part because the certifying doctor failed to include a rating for the claimant's right distal clavicle resection arthroplasty.

SUMMARY

The hearing officer's determination that the claimant's IR is 9% as certified by Dr. S is supported by sufficient evidence and is affirmed.

The true corporate name of the insurance carrier is **LM INSURANCE CORPORATION** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701-3218.**

Carisa Space-Beam
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge