

RENDERED: JULY 1, 2005; 2:00 P.M.
NOT TO BE PUBLISHED

**Commonwealth Of Kentucky
Court of Appeals**

NO. 2005-CA-000460-WC

MARTY LEE EASON

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-01-74304

HORNBACK CABINET COMPANY;
HONORABLE W. BRUCE COWDEN, JR.,
ADMINISTRATIVE LAW JUDGE; AND
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * *

BEFORE: BUCKINGHAM, DYCHE, AND TAYLOR, JUDGES.

DYCHE, JUDGE: The sole question in this Workers' Compensation petition for review is the appropriate method for assessment of Petitioner Marty Lee Eason's spinal injury, and its effect upon his whole body as expressed as an impairment rating. Finding no error in the Administrative Law Judge's ("ALJ") opinion and award, or the Workers' Compensation Board opinion affirming the award, we affirm.

It is unquestioned that Eason received work-related injuries and repairs to his back at multiple levels. In

assessing his disability, Dr. Auerbach used the "Diagnosis-Related Estimate" method,¹ which resulted in a 23% disability rating. Dr. Loeb used the "Range of Motion" method, which produced a 13% disability rating. The ALJ used Dr. Loeb's method and results in making his award, and Eason petitions for review.

Both doctors referred to the American Medical Association's Guides to the Evaluation of Permanent Impairment, Fifth Edition, 2001. That tract, at § 15.2, gives specific instructions on how to determine the "Appropriate Method for Assessment":

Spinal impairment rating is performed using one of two methods: the diagnosis-related estimate (DRE) or range-of-motion (ROM) method.

The DRE method is the principal methodology used to evaluate an individual who has had a distinct injury. When the cause of impairment is not easily determined and if the impairment can be well characterized by the DRE method, the evaluator should use the DRE method.

The ROM method is used in several situations:

. . . .

2. When there is multilevel involvement in the same spinal region (eg [sic], fractures at multiple levels, disk herniations, or stenosis with

¹ American Medical Association, Guides to the Evaluation of Permanent Impairment, §§ 15.2-15.11 (5th ed. 2001).

raciculopathy at multiple levels or bilaterally).

3. Where there is alteration of motion segment integrity (eg [sic], fusions) at multiple levels in the same spinal region

It is unquestioned that Eason has had fusion at multiple levels in the same spinal region. The range-of-motion method, as used by Dr. Loeb, was therefore the proper method for assessment, and the ALJ was correct in using the impairment rating that method produced. The opinion of the Workers' Compensation Board is affirmed.

ALL CONCUR.

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BRIEF FOR APPELLEE

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