

APPEAL NO. 131670
FILED AUGUST 29, 2013

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 20, 2013, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the compensable injury of [date of injury], does not extend to a left hand/wrist flexor tendon rupture and tenosynovitis; and (2) the appellant's (claimant) impairment rating (IR) is 0%. The claimant appealed the hearing officer's extent of injury and IR determinations. The claimant states on appeal that his extent of injury conditions in dispute resulted from his work injury. Further, the claimant disagreed with the 0% IR because his injuries include the extent-of-injury conditions in dispute. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed in part and reversed and rendered in part.

The claimant testified he twisted his left wrist while operating a sanding machine at work on [date of injury]. The parties stipulated that the claimant sustained a compensable injury on [date of injury], and that the claimant reached maximum medical improvement (MMI) on September 17, 2012, in accordance with the findings of [Dr. M], the designated doctor, and [Dr. K], the referral treating doctor. It is undisputed that the carrier has accepted a left wrist sprain/strain and left carpal tunnel syndrome. The Texas Department of Insurance, Division of Workers' Compensation (Division) appointed Dr. M as the designated doctor to determine MMI, IR and ability to return to work.

EXTENT OF INJURY

The hearing officer's determination that the compensable injury of [date of injury], does not extend to left hand/wrist flexor tendon rupture or tenosynovitis is supported by sufficient evidence and is affirmed.

IR

Section 408.125(c) provides that the report of the designated doctor shall have presumptive weight, and the Division shall base the IR on that report unless the preponderance of the other medical evidence is to the contrary, and that, if the preponderance of the medical evidence contradicts the IR contained in the report of the

designated doctor chosen by the Division, the Division shall adopt the IR of one of the other doctors. See 28 TEX. ADMIN. CODE § 130.1(c)(3) (Rule 130.1(c)(3)).

In this case, there are two certifications of MMI/IR in evidence, one from Dr. M, the designated doctor, and one from Dr. K, the referral treating doctor. As previously mentioned the parties stipulated the claimant reached MMI on September 17, 2012, in accordance with the findings of Dr. M and Dr. K. We note that Dr. M assessed a 0% IR for the left wrist, and Dr. K assessed an 11% IR for the left wrist, tenosynovitis, and a tendon rupture. In the Background Information section of the decision the hearing officer correctly stated that Dr. K's certification of MMI/IR cannot be adopted because he rated the tenosynovitis of the hand and wrist, as well as the flexor tendon rupture of the hand that have been determined not to be part of the claimant's compensable injury. The hearing officer determined Dr. M's certification that the claimant reached MMI on September 17, 2012, with a 0% IR was not contrary to the preponderance of the evidence, and adopted Dr. M's certification of MMI/IR.

Dr. M examined the claimant on February 12, 2013, and in a Report of Medical Evaluation (DWC-69) dated that same date, he certified that the claimant reached MMI on September 17, 2012, with a 0% IR based on loss of range of motion (ROM) for the left wrist using 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). Dr. M noted in his narrative report his measurements for loss of ROM of the left wrist as follows: flexion at 40° (0% impairment); extension at 40° (0% impairment); ulnar deviation at 40° (0% impairment); and radial deviation at least above 33°¹ (0% impairment). Based on Dr. M's measurements and the AMA Guides the assigned impairment for ulnar and radial deviation are correct; however, the assigned impairment for flexion and extension are incorrect.

According to Figure 29, page 3/38 of the AMA Guides a measurement for ulnar deviation at 40° results in a 0% impairment, and radial deviation at 40° results in a 0% impairment, as correctly assessed by Dr. M. However, according to Figure 26, page 3/36 of the AMA Guides a measurement for flexion at 40° results in 3% impairment, and extension at 40° results in 4% impairment. With the correct assigned impairments for the left wrist, the left wrist impairment is calculated by adding: radial (0%); ulnar (0%);

¹ For radial deviation of the left wrist there were three measurements: 35°, 37°, and 33°. According to Figure 29, page 3/38, of the AMA Guides, a radial deviation measurement for the wrist at or above 20° is assigned a 0% impairment. Also, the AMA Guides instruct that in measuring radial and ulnar deviation readings the figures should be rounded to the nearest 10°. See Appeals Panel Decision (APD) 130342, decided April 3, 2013, and APD 022504-s, decided November 12, 2002.

flexion (3%); and extension (4%), which results in 7% upper extremity (UE) impairment. Using Table 3, page 3/20, 7% UE converts to 4% whole person impairment.

The Appeals Panel has previously stated that, where the certifying doctor's report provides the component parts of the rating that are to be combined and the act of combining those numbers is a mathematical correction which does not involve medical judgment or discretion, the Appeals Panel can recalculate the correct IR from the figures provided in the certifying doctor's report and render a new decision as to the correct IR. See APD 041413, decided July 30, 2004; APD 100111, decided March 22, 2010; and APD 101949, decided February 22, 2011.

Under the guidance of those cases and according to the provisions of the AMA Guides, using Dr. M's measurements and applying the AMA Guides, the loss of ROM for the left wrist results in 4% whole person impairment, as discussed above. Accordingly, we reverse the hearing officer's decision that the claimant has a 0% IR and we render a decision that the claimant's IR is 4%, per a mathematical correction.

SUMMARY

We affirm the hearing officer's determination that the compensable injury of [date of injury], does not extend to left hand/wrist flexor tendon rupture.

We reverse the hearing officer's decision that the claimant has a 0% IR and we render a new decision that the claimant's IR is 4%, per a mathematical correction.

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 78701-3232.**

Veronica L. Ruberto
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge