

APPEAL NO. 141980
FILED NOVEMBER 10, 2014

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 April 25, 2013, and continued on October 30, 2013, and January 17, 2014, with the record closing on August 19, 2014, in Dallas, 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 pain disorder associated with psychological factors, and depression; (2) the appellant (claimant) reached maximum medical improvement (MMI) on January 7, 2013; and (3) the claimant's impairment rating (IR) is four percent. The claimant appealed the hearing officer's extent of injury, MMI, and IR determinations based on sufficiency of the evidence grounds. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed in part and reversed and rendered in part.

The claimant testified he sustained an injury to his left shoulder at work on [Date of Injury]. The parties stipulated that the claimant sustained a compensable injury on [Date of Injury], and that the date of statutory MMI is June 9, 2013. It is undisputed, and it has been administratively determined in a prior CCH held on September 20, 2012, that the claimant's compensable injury of [Date of Injury], extends to a left shoulder sprain/strain, left shoulder SLAP tear of the glenoid labrum, left shoulder glenohumeral joint effusion, left shoulder tenosynovitis of the long head of the biceps, and left shoulder distal supraspinatus tendinosis. The Texas Department of Insurance, Division of Workers' Compensation (Division) appointed (Dr. T) as the designated doctor to determine MMI and IR.

EXTENT OF INJURY AND MMI

The hearing officer's determinations that: (1) the compensable injury of [Date of Injury], does not extend to pain disorder associated with psychological factors, and depression, and; (2) the claimant reached MMI on January 7, 2013, are supported by sufficient evidence and are 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)).

The hearing officer determined that the claimant's IR is four percent based on Dr. T's amended certification of MMI/IR. Dr. T examined the claimant on September 7, 2013, and explained in his narrative report that he assigned a four percent IR based on (Dr. Mc) range of motion (ROM) measurements of the left shoulder on January 7, 2013, because the measurements were closer in time to the claimant's date of MMI. In a response to a letter of clarification dated August 11, 2014, Dr. T again restated that the claimant's IR is four percent based on the ROM measurements of left shoulder by Dr. Mc.

Dr. Mc, the initial designated doctor, examined the claimant January 7, 2013, and assigned a four percent impairment for the left upper extremity (UE) 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. Mc noted in his narrative report measurements for loss of ROM of the left shoulder as follows: flexion at 130° (3% impairment); extension at 50° (0% impairment); abduction at 150° (1% impairment); adduction at 50° (0% impairment); internal rotation at 80° (0% impairment); and external rotation at 90° (0% impairment). Dr. Mc combined the loss of ROM measurements of the left shoulder which resulted in a four percent UE impairment for left shoulder, he then converted the four percent UE impairment using Table 3 on page 3/20, to a two percent whole person impairment (WPI). We note that Dr. Mc listed a four percent IR on the Report of Medical Evaluation (DWC-69), rather than the two percent IR as explained and calculated in his narrative report.

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 Appeals Panel Decision (APD) 041413, decided July 30, 2004; APD 100111, decided March 22, 2010; and APD 101949, decided February 22, 2011.

The hearing officer states in the Discussion portion of the decision and order that Dr. T's report of September 7, 2013, and letter of clarification and amended certification of August 11, 2014, rates the claimant's entire compensable injury. We agree.

However, the AMA Guides require the conversion of the four percent UE impairment to a two percent WPI based on Table 3 on page 3/20.

We mathematically correct Dr. T's four percent IR to a two percent IR, under the guidance of those Appeals Panel decisions mentioned above and according to the provisions of the AMA Guides. In this case, the claimant's loss of ROM for his left shoulder results in four percent UE impairment for the left shoulder which converts to a two percent WPI, as discussed above. Accordingly, we reverse the hearing officer's decision that the claimant's IR is four percent and we render a decision that the claimant's IR is two percent, per a mathematical correction.

SUMMARY

We affirm the hearing officer's determination that the compensable injury of [Date of Injury], does not extend to pain disorder associated with psychological factors, and depression.

We affirm the hearing officer's determination that the claimant reached MMI on January 7, 2013.

We reverse the hearing officer's decision that the claimant has a four percent IR and we render a new decision that the claimant's IR is two percent, per a mathematical correction.

The true corporate name of the insurance carrier is **ILLINOIS NATIONAL INSURANCE COMPANY** 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