

APPEAL NO. 181233
FILED JULY 25, 2018

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 April 18, 2018, in (city), Texas, with (administrative law judge) presiding as the administrative law judge (ALJ). The ALJ resolved the disputed issues by deciding that: (1) the compensable injury sustained on (date of injury), does not extend to a lateral Hoffa's pad edema of the left knee and bilateral patellar chondromalacia; (2) the appellant (claimant) reached maximum medical improvement (MMI) on June 28, 2017; and (3) the claimant's impairment rating (IR) is zero percent.

The claimant appealed the ALJ's MMI, IR, and extent-of-injury determinations. The appeal file does not contain a response from the respondent (self-insured).

DECISION

Affirmed in part, reformed in part, and reversed and remanded in part.

The claimant testified that on (date of injury), she sustained an injury to her left and right knees when she struck both knees into a metal stool while in the course and scope of her employment. The parties stipulated, in part, that on (date of injury), the claimant sustained a compensable injury, at least in the form of bilateral knee sprains and contusions and the Texas Department of Insurance, Division of Workers' Compensation (Division) appointed (Dr. G) as the designated doctor to address the issues of MMI and IR.

The ALJ is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence. *Texas Employers Insurance Association v. Campos*, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). As an appellate reviewing tribunal, the Appeals Panel will not disturb challenged factual findings of an ALJ absent legal error, unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. *Cain v. Bain*, 709 S.W.2d 175, 176 (Tex. 1986); *In re King's Estate*, 150 Tex. 662, 244 S.W.2d 660 (1951).

EXTENT OF INJURY

At issue was whether the compensable injury of (date of injury), extends to a lateral Hoffa's pad edema of the left knee and bilateral "knee" patellar chondromalacia. We note that the ALJ mistakenly omitted the word "knee" from the disputed extent-of-injury condition of a "bilateral knee patellar chondromalacia" throughout the decision.

We reform the ALJ's decision to correct the extent-of-injury condition in dispute to state "bilateral knee patellar chondromalacia" throughout the decision.

The ALJ's determination that the compensable injury sustained on (date of injury), does not extend to a lateral Hoffa's pad edema of the left knee and bilateral knee patellar chondromalacia, as reformed, is supported by sufficient evidence and is affirmed.

MMI AND IR

Section 401.011(30)(A) defines MMI as "the earliest date after which, based on reasonable medical probability, further material recovery from or lasting improvement to an injury can no longer reasonably be anticipated." Section 408.1225(c) provides that the report of the designated doctor has presumptive weight, and the Division shall base its determination of whether the employee has reached MMI on the report of the designated doctor unless the preponderance of the other medical evidence is to the contrary. 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. 28 TEX. ADMIN. CODE § 130.1(c)(3) (Rule 130.1(c)(3)) provides that the assignment of an IR for the current compensable injury shall be based on the injured employee's condition as of the MMI date considering the medical record and the certifying examination.

Dr. G, the designated doctor, examined the claimant on August 26, 2017, and he certified on that same date that the claimant reached MMI on June 28, 2017, with a zero percent IR 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. G considered and rated the compensable bilateral knee contusions, but did not consider or rate the bilateral knee sprains. Dr. G did not rate the entire compensable injury and his certification of MMI and IR cannot be adopted. Accordingly, we reverse the ALJ's determinations that the claimant reached MMI on June 28, 2017, with a zero percent IR.

There is another certification of MMI and IR in evidence from (Dr. M), a referral doctor. Dr. M examined the claimant on October 31, 2017, and he certified on that same date that the claimant reached MMI on June 28, 2017, with a four percent IR using the AMA Guides. Dr. M's certification cannot be adopted because he only considers the bilateral knee contusions. Additionally, Dr. M's certification provides a

rating for the claimant's lower extremity under Table 62, page 3/83, of the AMA Guides which deals with impairments for lower extremity arthritis.

Since there are no other certifications of MMI and IR in evidence that consider and rate the entire compensable injury, we remand the issues of MMI and IR to the ALJ for further action consistent with this decision.

SUMMARY

We reform the ALJ's decision to correct the extent-of-injury condition in dispute to state "bilateral knee patellar chondromalacia" throughout the decision.

We affirm the ALJ's determination that the compensable injury of (date of injury), does not extend to a lateral Hoffa's pad edema of the left knee and bilateral knee patellar chondromalacia, as reformed.

We reverse the ALJ's determination that the claimant reached MMI on June 28, 2017, and remand the MMI issue to the ALJ for further action consistent with this decision.

We reverse the ALJ's determination that the claimant's IR is zero percent and we remand the IR issue to the ALJ for further action consistent with this decision.

REMAND INSTRUCTIONS

Dr. G is the designated doctor in this case. On remand, the ALJ is to determine whether Dr. G is still qualified and available to be the designated doctor. If Dr. G is no longer qualified or available to serve as the designated doctor, then another designated doctor is to be appointed to determine the claimant's MMI and IR for the (date of injury), compensable injury.

If Dr. G is still qualified and available to serve as the designated doctor, the ALJ is to request that Dr. G consider and rate the entire compensable injury, which includes bilateral knee sprains and contusions, in accordance with the AMA Guides considering the medical record and the certifying examination.

The parties are to be provided with the designated doctor's new certification of MMI and IR and are to be allowed an opportunity to respond. The ALJ is then to make a determination on MMI and IR consistent with this decision.

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 ALJ, 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 Division, 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 Appeals Panel Decision 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **EL PASO COUNTY (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**HONORABLE RUBEN JOHN VOGT, COUNTY JUDGE
500 EAST SAN ANTONIO, ROOM 301
EL PASO, TEXAS 79901.**

Veronica L. Ruberto
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge