

APPEAL NO. 181574
FILED SEPTEMBER 10, 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 June 6, 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 of (date of injury), extends to the right hip superior labrum tear extending into superior and posterior labrum, but it does not extend to the right knee meniscal tear; (2) the respondent (claimant) reached maximum medical improvement (MMI) on February 2, 2017; and (3) the claimant's impairment rating (IR) is 12%. The appellant (carrier) appeals the ALJ's determination that the compensable injury of (date of injury), extends to the right hip superior labrum tear extending into superior and posterior labrum contending that the causation evidence is conclusory. The carrier additionally disputes the ALJ's determinations of MMI and IR. The appeal file does not contain a response from the claimant. The ALJ's determination that the compensable injury does not extend to the right knee meniscal tear was not appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated that the claimant sustained a compensable injury on (date of injury), and that the compensable injury extends to a right knee sprain without internal derangement. The claimant testified that he was injured when he slipped on loose gravel when walking down an embankment.

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

The ALJ's determination that the compensable injury of (date of injury), extends to the right hip superior labrum tear extending into superior and posterior labrum is supported by sufficient evidence and is affirmed.

MMI

The ALJ's determination that the claimant reached MMI on February 2, 2017, is supported by the evidence and is affirmed.

IR

Section 408.125(c) provides that the report of the designated doctor shall have presumptive weight, and the Texas Department of Insurance, Division of Workers' Compensation (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. F), the Division-selected designated doctor for purposes of MMI and IR, examined the claimant on October 4, 2017, and certified that the claimant reached MMI on October 21, 2016, with a 12% 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). The certification from Dr. F only considered and rated a right knee sprain without internal derangement. The ALJ correctly found that Dr. F considered only the accepted right knee sprain and because this certification did not consider the entire compensable injury, it could not be adopted.

(Dr. D), the carrier-selected required medical examination doctor, examined the claimant on March 28, 2018, and provided three certifications. Dr. D certified that the claimant reached MMI on December 8, 2015, and assigned a 0% impairment considering only a right knee sprain without internal derangement. Accordingly, this certification did not consider and rate the entire compensable injury and cannot be adopted.

In the second certification Dr. D certified that the claimant reached MMI on February 2, 2017, and assigned 12% impairment using the AMA Guides. Dr. D assigned 4% impairment for loss of range of motion (ROM) of the right knee and 8% impairment for loss of ROM of the right hip. This certification specifically considered and rated a right knee sprain without internal derangement, right knee meniscus tear, and right hip superior labrum tear extending into superior and posterior labrum. In his narrative report, Dr. D noted that flexion contracture in the knee is due to osteoarthritis

and not the compensable injury. However, when he assigned 12% impairment, Dr. D assessed 4% impairment for loss of ROM of the right knee. This certification cannot be adopted because it rated a right knee meniscus tear which has been determined to be not part of the compensable injury.

In the third certification Dr. D certified that the claimant reached MMI on February 2, 2017, and assigned 8% impairment using the AMA Guides. This certification considered and rated a right knee sprain without internal derangement and right hip superior labral tear extending into the superior and posterior labrum. Dr. D assigned 8% impairment for loss of motion of the right hip. Dr. D stated that loss of ROM of the right knee was due to osteoarthritis and not the compensable injury so it does not qualify for impairment. The third certification from Dr. D considers and rates the entire compensable injury. There were no other certifications of MMI/IR in evidence.

The ALJ mistakenly adopted the second certification from Dr. D that considered and rated a right knee meniscus tear, which was determined not to be part of the compensable injury. The third certification from Dr. D considered and rated only a right knee sprain without internal derangement and right hip superior labral tear extending into the superior and posterior labrum and was performed in accordance with the AMA Guides. There is no other MMI/IR certification in evidence that can be adopted. Accordingly, we reverse the ALJ's determination that the IR is 12% and render a new decision that the claimant's IR is 8%.

SUMMARY

We affirm the ALJ's determination that the compensable injury extends to the right hip superior labrum tear extending into superior and posterior labrum.

We affirm the ALJ's determination that the claimant reached MMI on February 2, 2017.

We reverse the ALJ's determination that the claimant's IR is 12% and render a new decision that the claimant's IR is 8%.

The true corporate name of the insurance carrier is **ACCIDENT FUND GENERAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
1999 BRYAN STREET, SUITE 900
DALLAS, TEXAS 75201-3136.**

Margaret L. Turner
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Carisa Space-Beam
Appeals Judge