

APPEAL NO. 181833
FILED SEPTEMBER 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 June 27, 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 (date of injury), compensable injury does not extend to lumbar spine disc bulges at L4-5 and L5-S1, lumbar spine stenosis, or lumbar spine radiculopathy; (2) the appellant (claimant) reached maximum medical improvement (MMI) on August 21, 2012; and (3) the claimant's impairment rating (IR) is 4%. The claimant appealed, disputing the ALJ's determinations of extent of injury, MMI, and IR. The respondent (carrier) responded, urging affirmance of the disputed extent of injury, MMI, and IR determinations.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated, in part, that the carrier has accepted a (date of injury), compensable injury in the nature of a right wrist sprain/strain and left middle finger fracture and that the Texas Department of Insurance, Division of Workers' Compensation (Division) appointed (Dr. K) as the designated doctor to address the issues of MMI, IR, and extent of injury. The claimant testified that she was injured when she fell from a ladder.

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 (date of injury), compensable injury does not extend to lumbar spine disc bulges at L4-5 and L5-S1, lumbar spine stenosis, or lumbar spine radiculopathy is supported by sufficient evidence and is affirmed.

MMI/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.

The ALJ’s determination that the claimant reached MMI on August 21, 2012, is supported by sufficient evidence and is affirmed.

Dr. K examined the claimant for purposes of MMI and IR on September 26, 2017, and certified that the claimant reached MMI on August 21, 2012, with a 4% IR. Dr. K assessed 0% impairment for the claimant’s right wrist sprain/strain and 4% impairment for the claimant’s left middle finger fracture 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). According to the worksheet attached to her narrative, Dr. K assessed 46% digit impairment for loss of range of motion (ROM) of the left middle finger based on the following measurements: 30 degrees flexion for the DIP joint resulting in 21% finger impairment; 0 degrees extension for the DIP joint resulting in 0% finger impairment; 90 degrees flexion for the PIP joint resulting in 6% finger impairment; negative 20 degrees extension for the PIP joint resulting in 7% finger impairment; 70 degrees flexion for the MP joint resulting in 11% finger impairment; and 20 degrees extension for the MP joint resulting in 10% finger impairment. Dr. K first added the finger impairment assessed for each joint (21% for the DIP joint; 13% for the PIP joint; and 21% for the MP joint) and then combined the finger impairment assessed for each finger joint assessing a total of 46% for ROM for the left middle finger. Dr. K then used Table 1, page 3/18 of the AMA Guides and converted the 46% finger impairment to 9% hand impairment. Dr. K mistakenly recorded the total hand impairment as 8% rather than 9% which caused the conversion to upper extremity using Table 2, page 3/19 (7%) and whole person using Table 3, page 3/20 (4%) to be incorrect.

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) 171766, decided September 7, 2017; APD 172488, decided December 18, 2017; APD 152464, decided February 17, 2016; APD 121194, decided September 6, 2012; APD 041413, decided July 30, 2004; APD 100111, decided March 22, 2010; and APD 101949, decided February 22, 2011. Under the facts of this case, the certifying doctor's assigned IR can be mathematically corrected based on the impairment assessed for loss of ROM for the left middle finger.

Converting 9% hand impairment to upper extremity impairment using Table 2 of the AMA Guides results in 8% upper extremity impairment for the compensable injury rather than the 7% impairment contained on the worksheet attached to Dr. K's narrative report. Converting 8% upper extremity impairment to whole person using Table 3 of the AMA Guides results in 5% whole person impairment rather than the 4% assessed by Dr. K.

The ALJ found that the preponderance of the other medical evidence is not contrary to Dr. K's assigned IR, and after a mathematical correction that finding is supported by the evidence. Accordingly, we reverse the ALJ's determination that the claimant's IR is 4% and we render a new decision that the claimant's IR is 5%, as mathematically corrected.

SUMMARY

We affirm the ALJ's determination that the compensable injury of (date of injury), does not extend to lumbar spine disc bulges at L4-5 and L5-S1, lumbar spine stenosis, or lumbar spine radiculopathy.

We affirm the ALJ's determination that the claimant reached MMI on August 21, 2012.

We reverse the ALJ's determination that the claimant's IR is 4% and render a new decision that the claimant's IR is 5%, as mathematically corrected.

The true corporate name of the insurance carrier is **NEW HAMPSHIRE 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 78701-3218.**

Margaret L. Turner
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Carisa Space-Beam
Appeals Judge