APPEAL NO. 182195
FILED NOVEMBER 8, 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 August 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 appellant (claimant) reached maximum medical improvement (MMI) on September 13, 2017; and (2) the claimant has no permanent impairment as a result of the compensable injury. The claimant appealed, disputing the ALJ's determinations of MMI and impairment rating (IR). The respondent (carrier) responded, urging affirmance of the disputed MMI and IR determinations. The carrier filed a separate request for clerical correction, noting that the certification adopted by the ALJ assigned zero percent impairment rather than no permanent impairment as a result of the compensable injury.

DECISION

Affirmed as reformed.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury), which consists of a mild comminuted intra-articular cuboid fracture of the left foot, left shoulder strain, and bilateral plantar fasciitis; and that the Texas Department of Insurance, Division of Workers' Compensation (Division) selected (Dr. R) as designated doctor for purposes of MMI and IR. The claimant testified that she was injured when her foot caught on some carpet and she tripped and fell.

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 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).

The ALJ found that on September 13, 2017, Dr. R certified that the claimant reached MMI on September 13, 2017, with no permanent impairment as a result of the compensable injury and that the preponderance of the other medical evidence is not contrary to the certification of Dr. R that the claimant reached MMI on September 13, 2017, with no permanent impairment. However, a review of the record reflects that Dr. R examined the claimant on September 13, 2017, and certified that the claimant's IR is zero percent rather than no permanent impairment. Accordingly, we reform Finding of Fact Nos. 3 and 4 to reflect that Dr. R's certification of impairment was zero percent rather than no permanent impairment. The ALJ's finding as reformed that the preponderance of the other medical evidence is not contrary to the certification of Dr. R that the claimant reached MMI on September 13, 2017, with a zero percent IR is supported by sufficient evidence. Accordingly, we reform the ALJ's determination that the claimant has no permanent impairment to reflect that the claimant has zero percent impairment to conform to the evidence. We affirm the ALJ's determination that the claimant reached MMI on September 13, 2017.

SUMMARY

We affirm the ALJ's determination that the claimant reached MMI on September 13, 2017.

We affirm as reformed the ALJ's determination that the claimant's IR is zero percent.

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.

Margaret L. Turner
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Carisa Space-Beam
Appeals Judge