

APPEAL NO. 182223  
FILED NOVEMBER 14, 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 September 4, 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), does not extend to hypertension, tinnitus to the left ear, hearing loss of the left ear, vertigo, or salmon patch; (2) the appellant (claimant) reached maximum medical improvement (MMI) on November 1, 2017; and (3) the claimant has no permanent impairment as a result of the compensable injury. The claimant appealed that portion of the ALJ's determination that the compensable injury of (date of injury), does not extend to hypertension, tinnitus to the left ear, hearing loss of the left ear, and vertigo. The claimant specifically states on appeal that he "has never argued that he has a salmon patch." Also, the claimant disputes the ALJ's MMI and impairment rating (IR) determinations. The claimant states that the certification adopted by the ALJ assigned a zero percent IR rather than no permanent impairment for the compensable injury. The respondent (self-insured) responded, urging affirmance of the disputed extent of injury, MMI, and IR determinations. That portion of the ALJ's determination that the compensable injury of (date of injury), does not extend to salmon patch has not been appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed as reformed.

The parties stipulated, in part, the claimant sustained a compensable injury on (date of injury), which consists of skin burns secondary to high speed oil, temporary eczema, post-inflammatory hyperpigmentation, post-traumatic headache, and post-concussive syndrome; and that the Texas Department of Insurance, Division of Workers' Compensation (Division) selected (Dr. K) as designated doctor to determine extent of injury, MMI, and IR. The evidence reflects that the injury occurred after the claimant was hit with hot oil/asphalt when a hose connected to a tanker exploded.

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), does not extend to hypertension, tinnitus to the left ear, hearing loss of the left ear, and vertigo 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.

The ALJ found that on December 12, 2017, Dr. K certified that the claimant reached MMI on November 1, 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 that certification. However, a review of the record reflects that Dr. K examined the claimant on November 1, 2017, and certified on December 12, 2017, that the claimant's IR is zero percent rather than assessing no permanent impairment. Accordingly, we reform Finding of Fact Nos. 4 and 5 to reflect that Dr. K's certification of impairment was zero percent rather than an assessment of 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. K that the claimant reached MMI on November 1, 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 November 1, 2017.

## **SUMMARY**

We affirm the ALJ's determination that the compensable injury of (date of injury), does not extend to hypertension, tinnitus to the left ear, hearing loss of the left ear, and vertigo.

We affirm the ALJ's determination that the claimant reached MMI on November 1, 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 **CITY OF AUSTIN (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**LESLIE MILVO  
505 BARTON SPRINGS ROAD, SUITE 600  
AUSTIN, TEXAS 78704.**

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Veronica L. Ruberto  
Appeals Judge

CONCUR:

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Carisa Space-Beam  
Appeals Judge

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Margaret L. Turner  
Appeals Judge