

APPEAL NO. 190167  
FILED MARCH 25, 2019

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 December 11, 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 a lumbar sprain/strain, but does not extend to a cervical sprain/strain, thorax strain, lumbar facet joint arthritis, L4-5 disc bulge, L2 hemangioma, and left shoulder joint arthritis; (2) the appellant (claimant) reached maximum medical improvement (MMI) on November 1, 2017; (3) the claimant's impairment rating (IR) is 7%; and (4) the claimant had disability from November 8, 2017, through January 23, 2018, but not from March 14, 2017, through November 7, 2017, resulting from an injury sustained on (date of injury).

The claimant appealed, disputing the ALJ's MMI and IR determinations, along with that portion of the disability determination that was not in his favor. The respondent (carrier) responded, urging affirmance of the ALJ's MMI, IR, and disability determinations. The ALJ's determinations that the compensable injury of (date of injury), extends to a lumbar sprain/strain, but does not extend to a cervical sprain/strain, thorax strain, lumbar facet joint arthritis, L4-5 disc bulge, L2 hemangioma, and left shoulder joint arthritis and that the claimant had disability from November 8, 2017, through January 23, 2018, resulting from the compensable injury were not appealed and have become final pursuant to Section 410.169.

DECISION

Affirmed in part and reversed and rendered in part.

The claimant sustained an injury while lifting a heavy piece of equipment on (date of injury). The parties stipulated, in part, that: (1) the claimant sustained a compensable injury on (date of injury); (2) the carrier accepted a thoracic sprain/strain and left shoulder sprain/strain as the compensable injury; (3) the (date of injury), compensable injury does not extend to a cervical sprain/strain, lumbar facet joint arthritis, L4-5 disc bulge, L2 hemangioma, and left shoulder joint arthritis; and (4) the Texas Department of Insurance, Division of Workers' Compensation (Division) appointed (Dr. H) as designated doctor to determine the issues of extent of injury, MMI, and IR. Dr. H examined the claimant on September 28, 2018, and certified on that same date that the claimant reached MMI on November 1, 2017, with a 7% 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 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).

### **DISABILITY**

The ALJ's determination that the claimant did not have disability from March 14, 2017, through November 7, 2017, resulting from an injury sustained on (date of injury), is supported by sufficient evidence and is affirmed.

### **MMI**

The ALJ's determination that the claimant reached MMI on November 1, 2017, is supported by sufficient evidence and is affirmed.

### **IR**

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 designated doctor, Dr. H, examined the claimant on September 28, 2018, and assigned a 7% IR for the compensable injury. Dr. H considered and rated the thoracic sprain/strain, lumbar sprain/strain, and left shoulder sprain/strain. Dr. H's narrative report dated September 28, 2018, reflects that he assessed 0% impairment for the thoracic spine, placing the claimant in Thoracolumbar Diagnosis-Related Estimate (DRE) Category I: Complaints or Symptoms of the AMA Guides and 0% impairment for the lumbar spine, placing the claimant in Lumbosacral DRE Category I: Complaints or Symptoms of the AMA Guides.

For the left shoulder, Dr. H assessed a 17% upper extremity (UE) impairment based on range-of-motion deficits. Dr. H's narrative report shows that he measured for the left shoulder 70° of flexion resulting in 7% impairment (Figure 38, page 3/43), 50° of extension resulting in 0% impairment (Figure 38, page 3/43), 70° of abduction resulting in 5% impairment (Figure 41, page 3/44), 20° of adduction resulting in 1% impairment (Figure 41, page 3/44), 30° of external rotation resulting in 1% impairment (Figure 44, page 3/45), and 40° of internal rotation resulting in 3% impairment (Figure 44, page 3/45), which results in a 17% UE impairment. However, Dr. H incorrectly converted the 17% UE impairment to a 7% whole person impairment (WPI), rather than a 10% WPI, as stated in Table 3 on page 3/20.

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.

In this case, Dr. H correctly assessed a 17% UE impairment for the left shoulder; however, using Table 3 on page 3/20 a 17% UE impairment converts to a 10% WPI. Combining a 0% IR for the thoracic sprain/strain, 0% IR for the lumbar sprain/strain, and 10% WPI for the left shoulder sprain/strain, as corrected, results in a 10% IR for the compensable injury. The ALJ found that Dr. H's assessment of IR is supported by the preponderance of the evidence. After a mathematical correction, that finding is supported by the evidence. Accordingly, we reverse the ALJ's determination that the claimant's IR is 7% and we render a new decision that the claimant's IR is 10% as mathematically corrected.

## **SUMMARY**

We affirm the ALJ's determination that the claimant did not have disability from March 14, 2017, through November 7, 2017, resulting from an injury sustained on (date of injury).

We affirm the ALJ's determination that the claimant reached MMI on November 1, 2017.

We reverse the ALJ's determination that the claimant's IR is 7% and render a new decision that the claimant's IR is 10% as mathematically corrected.

The true corporate name of the insurance carrier is **ACE AMERICAN 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.**

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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