

APPEAL NO. 200444
FILED MAY 1, 2020

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on January 9, 2020, with the record closing on February 3, 2020, 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 sustained on (date of injury), extends to a fracture of the neck of the middle finger metacarpal bone and right wrist sprain/strain; (2) the appellant (claimant) reached maximum medical improvement (MMI) on November 20, 2019; and (3) the claimant's impairment rating (IR) is 10%.

The claimant appealed, disputing the ALJ's determinations of MMI and IR. The claimant argues that the ALJ's MMI and IR determinations are so contrary to the great weight and preponderance of the evidence as to be manifestly unjust. The claimant additionally appeals the ALJ's finding that the claimant failed to show good cause for his failure to attend the CCH held on January 9, 2020. The respondent (carrier) responded, urging affirmance of the disputed MMI and IR determinations. The carrier notes in its response that the ALJ made a typographical error on the year of the MMI date.

The issue of whether the compensable injury of (date of injury), extends to a fracture of the neck of the middle finger metacarpal bone and right wrist sprain/strain was resolved by stipulation at the CCH, was not appealed, and has become final pursuant to Section 410.169.

DECISION

Reversed and rendered in part and affirmed in part.

The parties stipulated, in part, that: (1) on (date of injury), the claimant sustained a compensable injury in the form of a crushing injury of the right hand, stiffness of the right thumb, index, middle, ring, and little fingers, effusion of the metacarpophalangeal (MCP) joints, fracture of the neck of the middle finger metacarpal bone, and right wrist sprain/strain and (2) the Texas Department of Insurance, Division of Workers' Compensation (Division)-selected designated doctor to determine MMI, IR, and extent of injury is (Dr. Q). The evidence reflects that the claimant was injured when his right hand was caught between two molds while at work.

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 claimant's attorney attended the January 9, 2020, CCH but the claimant did not attend. The ALJ's finding that the claimant failed to show good cause for not attending the CCH held on January 9, 2020, is supported by sufficient evidence.

MMI

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.

Dr. Q, the designated doctor, initially examined the claimant on July 19, 2018, and opined that the claimant had not yet reached MMI. Dr. Q subsequently examined the claimant on November 20, 2018, and opined that the claimant reached MMI on November 20, 2018, based on a review of the claimant's medical records and treatment. Dr. Q assessed an IR of 10% based on loss of range of motion (ROM) of the right wrist, right thumb, and right index, middle, ring, and little fingers 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). Dr. Q rated and considered the following conditions: crushing injury of the right hand, fracture of the neck of the middle finger metacarpal bone, and right wrist strain.

Dr. Q examined the claimant again on December 12, 2019. Dr. Q provided alternate certifications as a result of this examination. One of the certifications did not rate the entire compensable injury. However, the other certification considered and rated the entire compensable injury consisting of the following conditions: a crushing injury of the right hand; stiffness of the right thumb, index, middle, ring, and little fingers; effusion at the MCP joints; fracture of the neck of the middle finger metacarpal bone; and right wrist strain/sprain. Dr. Q certified that the claimant reached MMI on November 20, 2018, and assessed a 10% IR using the AMA Guides for loss of ROM of the claimant's right thumb, fingers, and wrist. In his discussion of the evidence, the ALJ stated that Dr. Q adequately explained his rationale for the selection of the MMI date

and the basis for the assignment of an IR. The ALJ additionally noted that Dr. Q rated the entire compensable injury. The ALJ specifically found in Finding of Fact No. 6 that Dr. Q certified that the claimant reached MMI on November 20, 2019, with a 10% IR. The ALJ found in Finding of Fact No. 7 that the preponderance of the other medical evidence is not contrary to the determination of the designated doctor that the claimant reached MMI on November 20, 2019, with a 10% IR. The ALJ then determined that the claimant reached MMI on November 20, 2019. It is clear from the discussion of the evidence that the ALJ was persuaded that the claimant reached MMI as certified by the designated doctor but made a typographical error throughout his decision. The ALJ's finding that the preponderance of the other medical evidence is not contrary to the certification of the designated doctor is supported by the evidence. However, there is no certification from Dr. Q, the designated doctor, that the claimant reached MMI on November 20, 2019. Rather, the ALJ inadvertently determined the date of MMI to be November 20, 2019, rather than November 20, 2018. Because the ALJ references the incorrect year of 2019 in connection with Dr. Q's MMI date throughout his decision we cannot make a clerical correction. See Appeals Panel Decision 122622, decided February 15, 2013. Accordingly, we reverse the ALJ's determination that the claimant reached MMI on November 20, 2019, and render a new decision that the claimant reached MMI on November 20, 2018, to conform to the evidence.

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. Rule 130.1(c)(3) provides, in part, 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's IR is 10% is supported by sufficient evidence and is affirmed.

SUMMARY

The ALJ's determination that the claimant reached MMI on November 20, 2019, is reversed and a new decision is rendered that the claimant reached MMI on November 20, 2018, to conform to the evidence.

The ALJ's determination that the claimant's IR is 10% is affirmed.

The true corporate name of the insurance carrier is **INDEMNITY INSURANCE COMPANY OF NORTH AMERICA** 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:

Cristina Beceiro
Appeals Judge

Carisa Space-Beam
Appeals Judge