APPEAL NO. 201177
FILED SEPTEMBER 24, 2020

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). This case returns following our remand in Appeals Panel Decision (APD) 200637, decided June 1, 2020. No contested case hearing (CCH) on remand was held. In the original CCH held on March 11, 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 of (date of injury), does not extend to C4-5 stenosis or a right medial meniscus tear; (2) the appellant (claimant) reached maximum medical improvement (MMI) on March 4, 2019; and (3) the claimant's impairment rating (IR) is five percent. In APD 200637, the ALJ's extent-of-injury determination was affirmed, and the MMI and IR determinations were reversed and remanded for the ALJ to correct a misstatement of the medical evidence in the record and determine MMI and IR.

In the Decision and Order on Remand, the ALJ resolved the disputed issues by deciding that: (1) the claimant reached MMI on March 4, 2019; and (2) the claimant's IR is four percent.

The claimant appealed, disputing the ALJ's MMI and IR determinations. The respondent (carrier) responded, urging affirmance of the disputed issues.

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).

DECISION

Affirmed as reformed.

Section 410.203(b) was amended effective September 1, 2011, to allow the Appeals Panel to affirm the decision of an ALJ as prescribed in Section 410.204(a-1). Section 410.204(a) provides, in part, that the Appeals Panel may issue a written decision on an affirmed case as described in subsection (a-1). Subsection (a-1) provides, in part, that the Appeals Panel may only issue a written decision in a case in which the Appeals Panel affirms the decision of an ALJ if the case: (1) is a case of first

impression; (2) involves a recent change in law; or (3) involves errors at the [CCH] that require correction but do not affect the outcome of the hearing. This case is a situation that requires correction but does not affect the outcome of the hearing.

Section 401.011(30)(A) provides that MMI is 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 Texas Department of Insurance, Division of Workers' Compensation (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, 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 found that the preponderance of the other medical evidence is not contrary to the certification of (Dr. B), the designated doctor, that the claimant reached MMI on March 4, 2019, with a four percent IR. That finding is supported by sufficient evidence. However, in Finding of Fact No. 3, the ALJ mistakenly listed the date of certification as December 13, 2019. The evidence reflects Dr. B examined the claimant on August 28, 2019, and again on December 13, 2019. In his first certification dated August 28, 2019, Dr. B certified that the claimant reached MMI on March 4, 2019, with a four percent IR for the compensable injury. In his December 13, 2019, certification, Dr. B indicated in his narrative report that the claimant's MMI date is March 4, 2019, and assigned a four percent IR. However, Dr. B mistakenly noted the IR on the December 13, 2019, Report of Medical Evaluation (DWC-69) to be six percent rather than four percent as indicated in his narrative report. There is an internal inconsistency between the IR assigned on the DWC-69 and narrative report and the result of range of motion testing noted in Dr. B's IR narrative. *See* APD 170967, decided June 16, 2017. Accordingly, we correct Finding of Fact No. 3 to reflect the date of certification from Dr. B which supports the determination of the ALJ. Therefore, we reform Finding of Fact No. 3 to state that on August 28, 2019, the designated doctor, Dr. B, certified that the claimant reached MMI on March 4, 2019, with a four percent IR.

The true corporate name of the insurance carrier is **SERVICE LLOYDS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

JOSEPH KELLEY-GRAY, CEO
6907 NORTH CAPITAL OF TEXAS HIGHWAY
AUSTIN, TEXAS 78731.

Cristina Beceiro
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge