

APPEAL NO. 210361
FILED APRIL 30, 2021

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 February 11, 2021, 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 right lower extremity RSD/CRPS; (2) the appellant (claimant) reached maximum medical improvement (MMI) on June 17, 2020; and (3) the claimant's impairment rating (IR) is 14%. The claimant appealed, disputing the ALJ's determinations of extent of injury, MMI, and IR. The respondent (carrier) responded, urging affirmance of the disputed extent-of-injury, MMI, and IR determinations.

DECISION

Affirmed in part and reversed and remanded in part.

The parties stipulated, in part, that: (1) the claimant sustained a compensable injury on (date of injury); (2) the carrier has accepted a compensable injury in the form of a left foot fracture of the first metatarsal, left foot fracture of the second metatarsal, superficial lacerations of the left foot, and RSD/CRPS of the left lower extremity; and (3) the Texas Department of Insurance, Division of Workers' Compensation (Division) appointed (Dr. S) as the designated doctor to address extent of injury, MMI, and IR. The evidence reflected that the claimant was injured when a piece of sheet metal dropped on his left foot. We note that a portion of the first 3 pages of Carrier's Exhibit E (which is a total of 23 pages) is illegible as submitted by the carrier. Carrier's Exhibit E is a peer review report from (Dr. R). Dr. R testified on behalf of the carrier at the CCH.

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 right lower extremity RSD/CRPS is supported by sufficient evidence and is affirmed.

MMI

The ALJ's determination that the claimant reached MMI on June 17, 2020, 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 in pertinent part that the assignment of an IR shall be based on the injured employee's condition as of the MMI date considering the medical record and the certifying examination and the doctor assigning the IR shall:

- (A) identify objective clinical or laboratory findings of permanent impairment for the current compensable injury;
- (B) document specific laboratory or clinical findings of an impairment;
- (C) analyze specific clinical and laboratory findings of an impairment;
- (D) compare the results of the analysis with the impairment criteria and provide the following:
 - (i) [a] description and explanation of specific clinical findings related to each impairment, including zero percent [IRs]; and
 - (ii) [a] description of how the findings relate to and compare with the criteria described in the applicable chapter of 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 doctor's inability to obtain required measurements must be explained.

The only certification in evidence is from the designated doctor, Dr. S. Dr. S examined the claimant on July 21, 2020, and certified that the claimant reached MMI on June 17, 2020, with a 14% IR using the AMA Guides. In his attached narrative report, Dr. S reported the following range of motion (ROM) measurements for the claimant's left ankle: 10° for flexion contracture; 10° for inversion; and 10° for eversion. Dr. S assessed 3% whole person impairment (WPI) for ROM loss of flexion contracture using Table 42 of the AMA Guides on page 3/78 for the claimant's left ankle. However, we note that Table 42 provides that 10° of flexion contracture results in 6% WPI rather than the 3% WPI assessed by Dr. S. Dr. S assessed 1% WPI for the claimant's loss of ROM for inversion/eversion. See Appeals Panel Decision (APD) 110741, decided July 25, 2011.

Dr. S also assessed 2% WPI for loss of ROM of the claimant's great toe and 2% WPI for loss of ROM of the claimant's lesser toes. Dr. S failed to provide ROM measurements for the claimant's toes to justify the IR assignments under Table 45, page 3/78 of the AMA Guides, only noting that the claimant had "barely any toe motion."

In evaluating the left lower extremity CRPS, Dr. S noted that there was no way to rate the claimant's motor loss because his motor function was inhibited by pain. Dr. S assessed impairment for the claimant's sensory loss using Table 68 on page 3/89 of the AMA Guides. Dr. S rated the following affected nerves: superficial peroneal (2%), sural (1%), medial plantar (2%), and lateral plantar (2%). Dr. S then used Table 20 on page 4/151 of the AMA Guides to grade the degree of decreased sensation for the affected nerves, multiplying the percentage associated with the nerves as set forth above with the decreased sensation assessed by Dr. S. Dr. S multiplied the 2% for the superficial peroneal nerve by 95% (for a total of 2%), the 1% for the sural nerve by 80% (for a total of 1%), the 2% for the medial plantar nerve by 95% (for a total of 2%), and the 2% assessed for the lateral plantar nerve by 80% (for a total of 2%). Dr. S assessed 7% impairment for the claimant's nerve dysfunction and combined that rating with the 8% assessed for the loss of ROM for a WPI for the compensable injury of 14%.

As discussed above, Dr. S applied Table 42 incorrectly for the reported ROM for flexion contracture and failed to provide ROM measurements in his narrative to support the impairment assessed for the claimant's great toe and lesser toes using Table 45. Accordingly, we reverse the ALJ's determination that the claimant's IR is 14%. There is no other certification in evidence. Accordingly, we remand the IR issue to the ALJ for further action consistent with this decision.

SUMMARY

We affirm the ALJ's determination that the compensable injury of (date of injury), does not extend to right lower extremity RSD/CRPS.

We affirm the ALJ's determination that the claimant reached MMI on June 17, 2020.

We reverse the ALJ's determination that the claimant's IR is 14% and remand the IR issue to the ALJ for further action consistent with this decision.

REMAND INSTRUCTIONS

Dr. S is the designated doctor in this case. The ALJ is to determine whether Dr. S is still qualified and available to serve as designated doctor. If Dr. S is no longer qualified or available, then another designated doctor is to be appointed to determine the claimant's IR.

The ALJ is to advise the designated doctor the claimant reached MMI on June 17, 2020, and request that the designated doctor rate the entire compensable injury which includes left foot fracture of the first metatarsal, left foot fracture of the second metatarsal, superficial lacerations of the left foot, and RSD/CRPS of the left lower extremity but does not include right lower extremity RSD/CRPS. The assignment of an IR is required to be based on the claimant's condition as of the MMI date considering the medical record and the certifying examination and according to the rating criteria of the AMA Guides and the provisions of Rule 130.1(c)(3).

The parties are to be provided with the designated doctor's new assignment of IR and are to be allowed an opportunity to respond. The ALJ is then to make a determination of IR consistent with this decision.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the ALJ, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Division, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See APD 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **BRIDGEFIELD CASUALTY 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 75201-3140.**

Margaret L. Turner
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Carisa Space-Beam
Appeals Judge