

APPEAL NO. 210429
FILED MAY 14, 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 was held on February 8, 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 complex regional pain syndrome (CRPS) of the left upper extremity (UE); (2) the appellant (claimant) reached maximum medical improvement (MMI) on December 4, 2019; and (3) the claimant's impairment rating (IR) is 8%. The claimant appealed, disputing the ALJ's determinations of extent of injury, MMI, and IR. The respondent (carrier) responded, urging affirmance of the extent of injury, MMI, and IR determinations.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury), in the form of a rupture of the left bicep tendon, median nerve injury of the left forearm, adhesive bursitis/capsulitis in the left shoulder, left shoulder sprain, medial antebrachial cutaneous nerve injury of the left forearm, and a lateral antebrachial cutaneous nerve injury of the left forearm; and the Texas Department of Insurance, Division of Workers' Compensation (Division) selected (Dr. D) as the designated doctor to address the issues of extent of injury, MMI, and IR. The claimant, an assistant maintenance employee, was injured on (date of injury), when he used his left hand to turn a difficult valve and felt intense pain down his arm.

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 CRPS of the left UE is supported by sufficient evidence and is affirmed.

MMI/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, 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 determined that the claimant reached MMI on December 4, 2019, with an 8% IR in accordance with an amended certification dated October 1, 2020, from Dr. D, the designated doctor. Dr. D examined the claimant on June 30, 2020, and initially issued two alternate certifications. Certification No. 1 lists the conditions of sprain of the left shoulder, adhesive bursitis of the left shoulder, rupture of the left bicep tendon, and median nerve injury of the left forearm and placed the claimant at MMI on December 4, 2019, with a 10% IR. However, the compensable conditions of medial and lateral antebrachial cutaneous nerve injuries were not listed, so this certification cannot be adopted. Dr. D’s Certification No. 2 includes those conditions addressed in Certification No. 1 plus CRPS of the left UE. Dr. D determined in Certification No. 2 that the claimant reached MMI on December 4, 2019, with an 11% IR. This certification considers CRPS which we have affirmed is not compensable and again fails to consider the stipulated conditions of medial and lateral antebrachial cutaneous nerve injuries. Therefore, this certification cannot be adopted.

Following the June 30, 2020, exam, a Division benefit review officer sent a letter of clarification to Dr. D on September 29, 2020, asking him to clarify if he felt that the claimant had a medial antebrachial cutaneous nerve injury and, if so, to provide an amended certification to include it. Additionally, the benefit review officer asked Dr. D to clarify whether the impairment assigned for the medial antebrachial cutaneous nerve is duplicated in the impairment for loss of motion.

In a response dated October 1, 2020, Dr. D explained that the April 6, 2018, surgery to treat the claimant's median nerve injury of the left forearm resulted in decreased sensation in the medial and lateral antebrachial cutaneous nerves, and they are part of the compensable injury. Dr. D provided two more certifications: Certification No. 3 and Certification No. 4.

The listed diagnoses in Certification No. 3, which was adopted by the ALJ, are the carrier-accepted conditions of a ruptured left bicep tendon, median nerve injury of the left forearm, adhesive capsulitis of the left shoulder, and left shoulder sprain. Dr. D maintained the prior MMI date of December 4, 2019, because no treatment after that date had an anticipation of further material recovery or lasting improvement and assigned an 8% 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), Dr. D assigned an 8% UE impairment for range of motion (ROM) deficits in the left shoulder and 5% UE impairment for ROM deficits in the left elbow. He also assigned 0% impairment for the median nerve injury and explained there is no other specific impairment for the left shoulder sprain, adhesive bursitis/capsulitis, left biceps tendon rupture, and median nerve injury. The shoulder and elbow impairments resulted in an 8% whole person impairment. Dr. D's Certification No. 3 does not include the medial and lateral antebrachial cutaneous nerve injuries that were stipulated as compensable by the parties, and therefore does not rate the entire compensable injury.

However, Dr. D's Certification No. 4 issued on October 1, 2020, does include the conditions of a ruptured left bicep tendon, a median nerve injury of the left forearm, adhesive capsulitis of the left shoulder, left shoulder sprain, medial antebrachial cutaneous nerve, and lateral antebrachial cutaneous nerve. For these conditions, Dr. D placed the claimant at MMI on December 4, 2019, and assigned a 10% IR. Using the AMA Guides, Dr. D assigned 8% UE impairment for ROM deficits in the left shoulder, and 5% UE impairment for ROM deficits in the left elbow. He assigned no impairment for the median nerve and lateral antebrachial cutaneous nerve, and a 3% UE impairment for the medial antebrachial cutaneous nerve, resulting in a 10% whole body IR. Certification No. 4 rates the entire compensable injury.

Given that Dr. D certified the claimant reached MMI on December 4, 2019, in Certification No. 4 and that certification rates the entire compensable injury and is supported by a preponderance of the evidence, we affirm the ALJ's determination that the claimant reached MMI on December 4, 2019. However, because the ALJ's determination that the claimant's IR is 8% is based on Dr. D's Certification No. 3, which does not consider the entire compensable injury, we reverse the ALJ's determination

that the claimant's IR is 8%. We render a new decision that the claimant's IR is 10%, as certified by Dr. D in Certification No. 4.

SUMMARY

We affirm the ALJ's determination that the compensable injury of (date of injury), does not extend to CRPS of the left UE.

We affirm the ALJ's determination that the claimant reached MMI on December 4, 2019.

We reverse the ALJ's determination that the claimant's IR is 8%, and we render a new decision that the claimant's IR is 10%.

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

**CORPORATION SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701-3218.**

Cristina Beceiro
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge