

APPEAL NO. 210430  
FILED MAY 20, 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 10, 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 first certification of maximum medical improvement (MMI) and assigned impairment rating (IR) from (Dr. M) on December 18, 2019, became final under Section 408.123 and 28 TEX. ADMIN CODE §130.12 (Rule 130.12); (2) the appellant (claimant) reached MMI on November 22, 2019; and (3) the claimant's IR is zero percent. The claimant appealed, disputing the ALJ's determinations of finality, MMI, and IR. The respondent (carrier) responded, urging affirmance of the finality, MMI, and IR determinations.

DECISION

Affirmed as reformed.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury), and the compensable injury extends to left knee grade 1 MCL sprain. The claimant testified that he was injured when moving a refrigerator.

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).

Section 408.123(e) provides that, except as otherwise provided by Section 408.123, an employee's first valid certification of MMI and first valid assignment of an IR is final if the certification or assignment is not disputed before the 91st day after the date written notification of the certification or assignment is provided to the employee and the carrier by verifiable means. Rule 130.12(b) provides, in part, that the first MMI/IR certification must be disputed within 90 days of delivery of written notice through verifiable means, including IRs related to extent-of-injury disputes. The notice must contain a copy of a valid Report of Medical Evaluation (DWC-69), as described in Rule 130.12(c).

The ALJ noted in her discussion of the evidence that the DWC-69 along with the Plain Language Notice (PLN-3) was sent to the claimant's correct address via the United States Postal Service, certified mail. In evidence was confirmation from the Postal Service that the letter was returned to sender after being unclaimed. There are notes from the adjuster in evidence that state the PLN-3/DWC-69 was mailed to the claimant both by certified and regular mail. The claimant testified that he received the DWC-69 by regular mail.

In Finding of Fact No. 4, the ALJ found that: "On December 26, 2019, [the] [c]laimant sent by certified mail the DWC-69 as signed and certified by Dr. [M]. The certified mail was returned to the sender on January 16, 2020. [The] [c]laimant had 90 days from January 15, 2020, to dispute the certification of [MMI] and assigned [IR]." The ALJ inadvertently indicated in her finding that the claimant was the person who sent the DWC-69. We reform Finding of Fact No. 4 to read as follows to conform to the evidence: On December 26, 2019, the claimant received a notice of certified mail, which included the DWC-69 as signed and certified by Dr. M. The certified mail was returned to the sender on January 16, 2020. The claimant had 90 days from January 15, 2020, to dispute the certification of MMI and assigned IR.

The ALJ's finding that the claimant failed to dispute the MMI/IR certification from Dr. M within 90 days after January 15, 2020, is supported by sufficient evidence.

The ALJ's finding that the claimant failed to establish that an exception to finality applies is also supported by sufficient evidence.

Accordingly, the ALJ's determination that the first certification of MMI and assigned IR from Dr. M on December 18, 2019, became final under Section 408.123 and Rule 130.12 is supported by sufficient evidence and is affirmed as reformed.

The ALJ's determination that the claimant reached MMI on November 22, 2019, is supported by sufficient evidence and is affirmed.

The ALJ's determination that the claimant's IR is zero percent is supported by sufficient evidence and 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.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Cristina Beceiro  
Appeals Judge

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Carisa Space-Beam  
Appeals Judge