

APPEAL NO. 210690
FILED JULY 15, 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 March 24, 2021, with the record closing on March 30, 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 neuropathy of the left upper extremity (UE); (2) the first certification of maximum medical improvement (MMI) and assigned impairment rating (IR) from (Dr. M) on February 10, 2018, did not become final under Section 408.123 and 28 TEX. ADMIN. CODE § 130.12 (Rule 130.12); (3) the respondent/cross-appellant (claimant) reached MMI on November 13, 2017; (4) the claimant's IR is 8%; and (5) the claimant had disability resulting from the compensable injury sustained on (date of injury), from November 14, 2017, and continuing to April 12, 2018. The appellant/cross-respondent (carrier) appeals the ALJ's determination of finality. The claimant responded to the carrier's appeal, urging affirmance of the ALJ's determination of finality. The claimant cross-appealed the ALJ's determinations of extent of injury, MMI, IR, and disability. The carrier responded to the claimant's cross-appeal, urging affirmance of the ALJ's determinations of extent of injury, MMI, and IR.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated, in part, that: (1) on (date of injury), the claimant sustained a compensable injury; (2) the compensable injury of (date of injury), extends to a laceration of the extensor muscle, fascia, and tendon of the left thumb; (3) Dr. M was appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division) as designated doctor to address MMI and IR; (4) the designated doctor, Dr. M, evaluated the claimant and certified that the claimant reached MMI on November 13, 2017, with an IR of 8%; and (5) the claimant reached statutory MMI on April 12, 2018. The evidence reflected that the claimant was injured on (date of injury), when he was using a cutting tool and it lacerated his left thumb.

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

FINALITY

The ALJ's determination that the first certification of MMI and assigned IR from Dr. M on February 10, 2018, did not become final under Section 408.123 and Rule 130.12 is supported by sufficient evidence and is affirmed.

DISABILITY

The ALJ's determination that the claimant had disability resulting from the compensable injury sustained on (date of injury), from November 14, 2017, and continuing to April 12, 2018, is supported by sufficient evidence and is affirmed.

MMI

The ALJ's determination that the claimant reached MMI on November 13, 2017, 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. 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 November 13, 2017, with an 8% IR in accordance with the certification of Dr. M, the designated doctor. The record indicates that the designated doctor examined the claimant on February 10, 2018, and assigned the 8% IR based on the compensable condition of a laceration of the extensor muscle, fascia, and tendon of the left thumb 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. M assessed 21% digit impairment for the claimant's left thumb based on the following range of motion (ROM) measurements: IP flexion 50° (2% impairment); IP extension 20° (0% impairment); MP flexion 35° (2% impairment); MP extension 10° (0% impairment); radial abduction angle 40° (0% impairment); adduction of 4 centimeters (4% impairment); and opposition of 3 centimeters (13% impairment). Dr. M then added these for a 21% digit impairment. However, we note that Table 6 on page 3/28 of the AMA Guides indicates that 40° of radial abduction results in 1% impairment, not 0% as calculated by Dr. M. Therefore, the total digit impairment is 22%, not 21% as indicated by Dr. M.

Dr. M further assessed 25% impairment for the claimant's left thumb sensory loss. He then combined the 25% for sensory loss with the 21% digit impairment for a total 41% digit impairment. Converting the digit impairment to hand impairment results in 16% hand impairment. Dr. M then converted the 16% hand impairment to 14% UE impairment which results in a total whole person impairment (WPI) of 8%.

The Appeals Panel has previously stated that, where the certifying doctor's report provides the component parts of the rating that are to be combined and the act of combining those numbers is a mathematical correction which does not involve medical judgment or discretion, the Appeals Panel can recalculate the correct IR from the figures provided in the certifying doctor's report and render a new decision as to the correct IR. See Appeals Panel Decision (APD) 171766, decided September 7, 2017; APD 172488, decided December 18, 2017; APD 152464, decided February 17, 2016; APD 121194, decided September 6, 2012; APD 041413, decided July 30, 2004; APD 100111, decided March 22, 2010; and APD 101949, decided February 22, 2011.

In this case, Dr. M mistakenly indicated that 40° of radial abduction in the thumb results in 0% impairment, instead of 1% impairment, as shown in Table 6, page 3/28 of the AMA Guides, to arrive at the WPI for the left thumb. Adding 1% impairment to Dr. M's other thumb ROM measurements results in a 22% digit impairment for loss of motion in the left thumb. Combining the 22% impairment with 25% impairment for sensory loss results in 42% thumb impairment. Converting the 42% thumb impairment to hand impairment results in 17% hand impairment. Converting 17% hand impairment to UE impairment results in 15% UE impairment. The 15% UE impairment results in a WPI of 9%, instead of 8% as assessed by Dr. M.

The ALJ found that the preponderance of the other medical evidence is not contrary to the certification of IR by Dr. M. After a mathematical correction, that finding is supported by the evidence. Accordingly, 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 9% as mathematically corrected.

SUMMARY

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

We affirm the ALJ's determination that the first certification of MMI and assigned IR from Dr. M on February 10, 2018, did not become final under Section 408.123 and Rule 130.12.

We affirm the ALJ's determination that the claimant had disability resulting from the compensable injury sustained on (date of injury), from November 14, 2017, and continuing to April 12, 2018.

We affirm the ALJ's determination that the claimant reached MMI on November 13, 2017.

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 9% as mathematically corrected.

The true corporate name of the insurance carrier is **TRAVELERS INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
d/b/a CSC-LAWYERS INCORPORATING SERVICE CO.
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