

APPEAL NO. 210693  
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 (CCH) was held on April 7, 2021, in (city), Texas, with (administrative law judge) presiding as the administrative law judge (ALJ). The ALJ resolved the disputed issue by deciding that the respondent's (claimant) impairment rating (IR) is 23%. The appellant (self-insured) appeals the ALJ's determination of IR. Additionally, the self-insured contends that there may have been unauthorized persons at the CCH. The appeal file does not contain a response from the claimant.

DECISION

Reversed and rendered.

The parties stipulated, in part, that: (1) on (date of injury), the claimant sustained a compensable injury; (2) the compensable injury extends to a left shoulder sprain/strain grade 1, left hip contusion, left forearm/wrist contusion, left knee contusion, left knee sprain/strain grade 1, left ankle sprain/strain grade 1, and a lumbosacral contusion/strain grade 1; (3) (Dr. D) was appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division) as designated doctor to determine maximum medical improvement (MMI) and IR; and (4) the claimant reached MMI on September 21, 2020. The evidence reflected that the claimant was injured when she fell while moving bags of trash. We find no merit in the self-insured's allegation that unauthorized participants appeared to be present during the CCH and may have adversely influenced the proceedings.

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 record indicates that the designated doctor examined the claimant on October 14, 2020, and certified that the claimant reached MMI on September 21, 2020, and assigned a 23% 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) for the compensable injury. Dr. D assessed 10% upper extremity (UE) impairment for the claimant's left wrist based on the following range of motion (ROM) measurements: flexion 50° (2% UE impairment); extension 40° (4% UE impairment); radial deviation 10° (2% UE impairment); and ulnar deviation 20° (2% UE impairment). Dr. D further assessed 6% UE impairment for the claimant's left shoulder based on the following ROM measurements: flexion 150° (2% UE impairment); extension 40° (1% UE impairment); abduction 140° (2% UE impairment); adduction 30° (1% UE impairment); internal rotation 80° (0% UE impairment); and external rotation 90° (0% UE impairment). Dr. D then combined 10% UE impairment for the left wrist with 6% UE impairment for the left shoulder for a total of 15% UE impairment which using Table 3, page 3/20 converts to a whole person impairment (WPI) of 9%. We note that Dr. D in the worksheet attached to his narrative report, inadvertently mixed the numerical measurements for abduction and adduction for the left shoulder. However, the chart of actual ROM measurements included in his narrative is correct and the impairment assessed for the left shoulder is in accordance with the AMA Guides based on the ROM loss measured as reflected in Dr. D's chart.

Dr. D assessed 5% WPI for the lumbar spine, placing the claimant in Lumbosacral Diagnosis-Related Estimate (DRE) Category II.

Dr. D then assessed 6% WPI for the claimant's left hip based on the following ROM measurements: flexion 90° (2% WPI); extension 24° (4% WPI); internal rotation 30° (0% WPI); external rotation 34° (0% WPI); abduction 38° (0% WPI); and adduction 38° (0% WPI). Dr. D assessed 4% WPI for the claimant's left knee based on the following ROM measurement: flexion 100° (4% WPI). Dr. D then assessed 4% WPI for the claimant's left ankle based on the following ROM measurements: using Table 42, page 3/78, plantar flexion 20° (3% WPI) and extension/dorsiflexion 32° (0% WPI); using Table 43 (hindfoot), page 3/78, inversion 16° (1% WPI) and eversion 14° (0% WPI). In his narrative, under the heading left ankle, Dr. D stated that "[t]he claimant is awarded 4% [WPI] for the left ankle."

Dr. D then combined the 6% left hip WPI with the 4% left knee WPI for a total of 10% WPI and then combined the 10% WPI with 1% for the left ankle resulting in 11% WPI for the left lower extremity (LE). Dr. D combined the 11% WPI for the left LE with 9% WPI for the left UE resulting in 19%. Dr. D combined 19% WPI with 5% WPI for the lumbar spine for a total of 23% WPI. Dr. D mistakenly combined 1% for the left ankle, rather than the 4% impairment he awarded for the left ankle, with the 6% WPI for the left hip and 4% WPI for the left knee. 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. D correctly assessed 4% WPI for the left ankle, but mistakenly combined 1% for the left ankle with the WPI derived for the left hip and left knee to arrive at the WPI for the left LE. Combining 6% left hip WPI with the 4% left knee WPI for a total of 10% WPI and then combining the 10% WPI with 4% for the left ankle results in 14% WPI for the left LE. Combining the 14% WPI for the left LE with 9% WPI for the left UE results in 22%. Combining 22% WPI with 5% WPI for the lumbar spine results in a total of 26% WPI.

The ALJ found that the preponderance of the other medical evidence is not contrary to the certification of IR by Dr. D. After a mathematical correction, that finding is supported by the evidence. Accordingly, we reverse the ALJ's determination that the claimant's IR is 23% and we render a new decision that the claimant's IR is 26% as mathematically corrected.

The true corporate name of the insurance carrier is **CITY OF IRVING (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**SHANAE JENNINGS  
CITY SECRETARY, CITY OF IRVING  
825 W. IRVING BLVD.  
IRVING, TEXAS 75060.**

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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