

APPEAL NO. 210867
FILED AUGUST 5, 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 May 20, 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 shoulder infraspinatus or supraspinatus tendinosis, right shoulder partial thickness traumatic rotator cuff tear, or right shoulder adhesive capsulitis; (2) the appellant (claimant) reached maximum medical improvement (MMI) on July 25, 2019; and (3) the claimant's impairment rating (IR) is 7%. The claimant appealed the ALJ's determinations of extent of injury, MMI, and IR. The respondent (carrier) responded to the claimant's appeal, urging affirmance of the ALJ's determinations.

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 in the form of a right shoulder bone contusion of the posterior aspect of the humeral head and proximal metaphysis and an acute right shoulder coracoid fracture; and (2) the Texas Department of Insurance, Division of Workers' Compensation (Division)-selected designated doctor to determine extent of injury, MMI, and IR is (Dr. C). The evidence reflected that the claimant, while working as an air conditioning technician on (date of injury), was injured when he threw a tank onto his right shoulder.

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 shoulder infraspinatus or supraspinatus tendinosis, right shoulder partial

thickness traumatic rotator cuff tear, or right shoulder adhesive capsulitis is supported by sufficient evidence and is affirmed.

MMI

The ALJ's determination that the claimant reached MMI on July 25, 2019, 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 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 July 25, 2019, with a 7% IR in accordance with the certification of Dr. C, the designated doctor. The record indicates that the designated doctor initially examined the claimant on September 26, 2019, and determined that the claimant had not reached MMI. Dr. C then examined the claimant on October 9, 2020, and assigned the 7% IR based on the compensable right shoulder contusion and acute coracoid fracture 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. C stated in her narrative report that she used the range of motion (ROM) measurements from the exam of (Dr. V), the post-designated doctor required medical examination doctor. Dr. C assessed a 12% upper extremity (UE) impairment for the claimant's right shoulder based on the following ROM measurements: flexion 100° (5% impairment); extension 30° (0% impairment); adduction 30° (1% impairment); abduction 70° (4% impairment); internal rotation 60° (2% impairment); and external rotation 60° (0% impairment). Dr. C then added these for a 12% UE impairment, which she converted to a 7% whole person impairment (WPI).

However, there were two mistakes in Dr. C's calculation. First, we note that Dr. C made a mistake in transcribing the abduction measurement from Dr. V's exam. Dr. V notated 90° of abduction, not 70° as written by Dr. C. Although Dr. C incorrectly wrote the abduction measurement, she correctly stated that the impairment for abduction was

4%. Second, Dr. C stated that 30° of extension resulted in 0% impairment, but Figure 38 on page 3/43 of the AMA Guides indicates that 30° of extension results in 1% impairment. Therefore, the total UE impairment is 13%, not 12% as indicated by Dr. C. The 13% UE results in a WPI of 8%, and not 7% as determined by Dr. C.

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. C mistakenly indicated that 30° of extension in the shoulder results in 0% impairment, instead of 1% impairment as shown in Figure 38 on page 3/43 of the AMA Guides to arrive at the WPI for the right shoulder. Adding 1% impairment to Dr. C's other shoulder ROM measurements results in a 13% UE impairment for loss of motion in the right shoulder. The 13% UE impairment results in a WPI of 8%, instead of 7% as assessed by Dr. C.

The ALJ found that the preponderance of the other medical evidence is not contrary to the certification of IR by Dr. C. After a mathematical correction, that finding is supported by the evidence. Accordingly, we reverse the ALJ's determination that the claimant's IR is 7%, and we render a new decision that the claimant's IR is 8% as mathematically corrected.

SUMMARY

We affirm the ALJ's determination that the compensable injury of (date of injury), does not extend to right shoulder infraspinatus or supraspinatus tendinosis, right shoulder partial thickness traumatic rotator cuff tear, or right shoulder adhesive capsulitis.

We affirm the ALJ's determination that the claimant reached MMI on July 25, 2019.

We reverse the ALJ's determination that the claimant's IR is 7%, and we render a new decision that the claimant's IR is 8% as mathematically corrected.

The true corporate name of the insurance carrier is **AMTRUST INSURANCE COMPANY OF KANSAS, INC.** 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