

APPEAL NO. 211000
FILED AUGUST 26, 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 13, 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 concussion, post-concussion syndrome, and L2-3, L3-4, L4-5, and L5-S1 disc bulges; (2) the appellant (claimant) reached maximum medical improvement (MMI) on August 4, 2020; and (3) the claimant's impairment rating (IR) is one percent.

The claimant appealed the ALJ's determinations of extent of injury, MMI, and IR. The respondent (carrier) responded, urging affirmance of the ALJ's determinations.

DECISION

Affirmed in part and reversed and remanded in part.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury), in the form of at least the carrier-accepted conditions of closed head contusion, lumbosacral contusion, lumbar strain/sprain, cervical strain/sprain, and left shoulder strain/sprain; (Dr. Q) was properly appointed as designated doctor on the issues of MMI and IR; and there are no other conditions or diagnoses that need to be adjudicated in this case for the purpose of determining MMI and IR. The claimant, a driver manager, was injured on (date of injury), when he fell exiting the cab of his truck and struck his buttocks and head on the stairs of the truck.

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 concussion, post-concussion syndrome, and L2-3, L3-4, L4-5, and L5-S1 disc bulges is supported by sufficient evidence and is affirmed.

MMI AND 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 Texas Department of Insurance, Division of Workers’ Compensation (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 August 4, 2020, with a one percent IR in accordance with the certification of Dr. Q. Dr. Q examined the claimant on August 4, 2020, and considered and rated a closed head contusion, lumbosacral contusion, lumbar sprain/strain, cervical sprain/strain, left shoulder sprain/strain, and left ring finger sprain. 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. Q assigned a one percent impairment for range of motion deficits in the left shoulder, zero percent impairment for the closed head contusion, zero percent impairment for the lumbosacral contusion, zero percent impairment for the cervical sprain/strain, zero percent impairment for the lumbar sprain/strain, and zero percent impairment for the left ring finger sprain. As this certification considers and rates a left ring finger sprain, a condition that has not been accepted and has not yet been determined to be part of the compensable injury, it cannot be adopted. Accordingly, we reverse the ALJ’s determination that the claimant reached MMI on August 4, 2020, with a one percent IR.

The evidence contains two other MMI/IR certifications, both of which are from (Dr. VB), a doctor selected by the treating doctor to act in her place. Dr. VB examined the claimant on December 7, 2020, and in his first certification determined that the claimant reached MMI on October 27, 2020, with an eight percent IR using the AMA

Guides. Dr. VB considered and rated the conditions of cervical sprain, lumbar sprain, shoulder sprain, and post-concussion syndrome. As discussed above, we have affirmed the ALJ's determination that the compensable injury of (date of injury), does not extend to post-concussion syndrome. As this certification considers and rates a condition that has been determined to be not compensable, it cannot be adopted.

Dr. VB's second certification also certifies that the claimant reached MMI on October 27, 2020, with an eight percent IR. However, it is not clear from the narrative report what conditions are considered and rated in this certification. Therefore, it also cannot be adopted.

As there is no MMI/IR certification in evidence that can be adopted, we remand the issues of MMI and IR to the ALJ for further action consistent with this decision.

SUMMARY

We affirm the ALJ's determination that the compensable injury of (date of injury), does not extend to concussion, post-concussion syndrome, and L2-3, L3-4, L4-5, and L5-S1 disc bulges.

We reverse the ALJ's determinations that the claimant reached MMI on August 4, 2020, with a one percent IR, and we remand the issues of MMI and IR back to the ALJ for further action consistent with this decision.

REMAND INSTRUCTIONS

Dr. Q is the designated doctor in this case. On remand, the ALJ is to determine whether Dr. Q is still qualified and available to be the designated doctor. If Dr. Q is no longer qualified or available to serve as the designated doctor, then another designated doctor is to be appointed to determine the claimant's MMI and IR for the (date of injury), compensable injury.

The ALJ is to inform the designated doctor that the (date of injury), compensable injury is a closed head contusion, lumbosacral contusion, lumbar strain/sprain, cervical strain/sprain, and left shoulder strain/sprain. The ALJ is also to inform the designated doctor that the (date of injury), compensable injury does not extend to concussion, post-concussion syndrome, and L2-3, L3-4, L4-5, and L5-S1 disc bulges.

The ALJ is to request the designated doctor to give an opinion on the claimant's MMI and IR by rating the entire compensable injury in accordance with the AMA Guides considering the medical record and the certifying examination.

The parties are to be provided with the designated doctor's new MMI/IR certification and are to be allowed an opportunity to respond. The ALJ is then to make a determination on MMI and IR consistent with this decision.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the ALJ, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Division, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See Appeals Panel Decision 060721, decided June 12, 2006.

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

**CT CORPORATION SYSTEM
1999 BRYAN STREET, SUITE 900
DALLAS, TEXAS 75201-3140.**

Cristina Beceiro
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge