

APPEAL NO. 211011
FILED AUGUST 18, 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 sustained on (date of injury), does not extend to right knee chondromalacia of the medial patellar facet and medial trochlea or right knee derangement of the lateral meniscus; (2) the appellant (claimant) reached maximum medical improvement (MMI) on November 15, 2019; and (3) the claimant's impairment rating (IR) is 11%. The claimant appealed, disputing the ALJ's determinations of extent of injury, MMI, and IR. The respondent (self-insured) responded, urging affirmance of the disputed extent-of-injury, MMI, and IR determinations.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated, in part, that the self-insured has accepted an (date of injury), compensable injury in the nature of a right knee sprain, left shoulder rotator cuff tear/rupture, left shoulder superior glenoid labrum lesion, a left ankle sprain, and left shoulder impingement syndrome; the date of statutory MMI is April 6, 2021; the Texas Department of Insurance, Division of Workers' Compensation (Division) appointed (Dr. K) as designated doctor to address the issues of MMI and IR; and the Division appointed (Dr. E) as designated doctor to address the extent-of-injury issue. The claimant testified she was injured when she fell on (date of injury).

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 (date of injury), compensable injury does not extend to right knee chondromalacia of the medial patellar facet and medial trochlea or

right knee derangement of the lateral meniscus is supported by sufficient evidence and is affirmed.

MMI

The ALJ's determination that the claimant reached MMI on November 15, 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 designated doctor, Dr. K, examined the claimant on February 4, 2021, and provided alternate certifications of MMI/IR. In the certification adopted by the ALJ, Dr. K considered and rated the right knee sprain, left shoulder rotator cuff tear/rupture, left shoulder superior glenoid labrum lesion, left ankle sprain, and left shoulder impingement syndrome 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. K assessed 0% impairment for both the right knee and left ankle based on range of motion (ROM) measurements.

Dr. K provided the following ROM measurements for assessing impairment of the claimant's left shoulder: flexion 120° (4% upper extremity (UE) impairment); extension 50° (0% UE impairment); adduction 50° (0% UE impairment); abduction 110° (3% UE impairment); internal rotation 60° (2% UE impairment) and external rotation 4° (1% UE impairment). Dr. K assessed 10% UE impairment for loss of ROM of the claimant's left shoulder, and 10% UE impairment per Table 27 on page 3/61 of the AMA Guides for a distal clavicle resection that was performed for the compensable injury, for a combined whole person impairment (WPI) of 11%. We note that Dr. K indicated in his report that 4° of external rotation results in 1% UE impairment. The AMA Guides provide on page 3/44 that when assessing impairment for loss of ROM of internal and external rotation of the shoulder the figures should be rounded to the nearest 10°. Using Figure 44 on page 3/45 of the AMA Guides and rounding 4° of external rotation to

either 0° or 10° results in 2% UE impairment rather than the 1% UE impairment assessed by Dr. K.

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 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 the instant case, the same impairment results for left shoulder external rotation whether 4° is rounded up to 10° or down to 0°. Therefore, no medical judgment is necessary to determine the impairment assessed based on the rounding of 4°.

Using the numbers provided by Dr. K in his narrative report, 2% UE impairment would be assessed for loss of ROM of external rotation of the left shoulder. Adding 2% UE impairment for external rotation with 4% UE impairment assessed for loss of ROM of flexion; 3% UE impairment assessed for loss of ROM of abduction; and 2% UE impairment assessed for loss of ROM of internal rotation results in 11% UE impairment for loss of ROM of the left shoulder rather than the 10% UE assessed by Dr. K. 11% UE impairment assessed for loss of ROM combined with 10% UE impairment assessed for a distal clavicle resection results in 20% UE impairment which converts to 12% WPI rather than the 11% WPI assessed by Dr. K. The ALJ found that Dr. K's assessment of IR is not contrary to the preponderance of the other medical evidence. After a mathematical correction, that finding is supported by the evidence. Accordingly, we reverse the ALJ's determination that the claimant's IR is 11% and render a new decision that the claimant's IR is 12% as mathematically corrected.

SUMMARY

We affirm the ALJ's determination that the (date of injury), compensable injury does not extend to right knee chondromalacia of the medial patellar facet and medial trochlea or right knee derangement of the lateral meniscus.

We affirm the ALJ's determination that the claimant reached MMI on November 15, 2019.

We reverse the ALJ's determination that the claimant's IR is 11% and render a new decision that the claimant's IR is 12% as mathematically corrected.

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

**NAME
ADDRESS
CITY, STATE ZIPCODE.**

Margaret L. Turner
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Carisa Space-Beam
Appeals Judge