

APPEAL NO. 211141
FILED SEPTEMBER 13, 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 June 16, 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 impingement syndrome, right shoulder rotator cuff tear, lumbar spine bulging disc at L4-5 with radiculopathy, or herniated disc at lumbosacral region L5-S1; (2) the appellant (claimant) reached maximum medical improvement (MMI) on June 9, 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 to the claimant's appeal, urging affirmance of the ALJ's determinations.

DECISION

Affirmed in part and reversed and rendered in part.

A review of the record reflects that 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 right shoulder strain, lumbar strain, and an exacerbation of low back pain. We note that the ALJ mistakenly left out an exacerbation of low back pain in the stipulation in his decision. Therefore, we reform stipulation 1.D. to read: "The claimant sustained a compensable injury on (date of injury), in the form of at least the carrier-accepted conditions of right shoulder strain, lumbar strain, and an exacerbation of low back pain." The parties additionally stipulated that (Dr. H) was properly appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division) as designated doctor on the issues of extent of injury, MMI, and IR. The evidence reflected that the claimant, while working as a crib attendant on (date of injury), was injured when she slipped on drill bits that were left on the floor and held on to a toolbox to catch herself. She felt a pop in her right shoulder and low back.

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 impingement syndrome, right shoulder rotator cuff tear, lumbar spine bulging disc at L4-5 with radiculopathy, or herniated disc at lumbosacral region L5-S1 is supported by sufficient evidence and is affirmed.

MMI

The ALJ's determination that the claimant reached MMI on June 9, 2020, 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 June 9, 2020, with a one percent IR in accordance with the certification of Dr. H, the designated doctor. The record indicates that the designated doctor initially examined the claimant on September 23, 2020, and issued alternate certifications: one based on the carrier-accepted conditions and one based on the accepted and disputed conditions. Dr. H then examined the claimant on March 24, 2021, and again issued alternate certifications. Dr. H assigned the one percent IR based on the carrier-accepted conditions of right shoulder strain, lumbar strain, and exacerbation of low back pain 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. H stated in his narrative report that he used the range of motion (ROM) measurements from his first exam on September 23, 2020, because they best describe the claimant's impairment from the compensable conditions. Dr. H assessed a zero percent impairment for the claimant's lumbar spine based on Diagnosis-Related Estimate Lumbosacral Category I of the AMA Guides. He then calculated the right shoulder impairment based on the following ROM measurements from his first exam: flexion 155° rounded to 160° (one percent impairment); extension 50° (zero percent impairment); abduction 136° rounded to 140°

(two percent impairment); adduction 50° (zero percent impairment); internal rotation 68° rounded to 70° (one percent impairment); and external rotation 55° rounded to 60° (zero percent impairment). Dr. H correctly added these for a four percent upper extremity (UE) impairment. However, although Dr. H correctly calculated the UE impairment for the right shoulder in the physical evaluation and examination portion of his report, in the IR determination portion of his report, Dr. H mistakenly wrote that the total right shoulder UE impairment was two percent, instead of four percent. He then converted two percent UE impairment to a one percent whole person impairment (WPI) and combined that with the zero percent lumbar impairment for a total of a one percent WPI for the compensable injury.

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. H mistakenly indicated that the right shoulder UE impairment was two percent instead of four percent. The four percent UE impairment results in a WPI of two percent, instead of one percent as assessed by Dr. H.

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

SUMMARY

We reform stipulation 1.D. to read: "The claimant sustained a compensable injury on (date of injury), in the form of at least the carrier-accepted conditions of right shoulder strain, lumbar strain, and an exacerbation of low back pain."

We affirm the ALJ's determination that the compensable injury of (date of injury), does not extend to right shoulder impingement syndrome, right shoulder rotator cuff tear, lumbar spine bulging disc at L4-5 with radiculopathy, or herniated disc at lumbosacral region L5-S1.

We affirm the ALJ's determination that the claimant reached MMI on June 9, 2020.

We reverse the ALJ's determination that the claimant's IR is one percent, and we render a new decision that the claimant's IR is two percent as mathematically corrected.

The true corporate name of the insurance carrier is **NEW HAMPSHIRE INSURANCE COMPANY** 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.**

Cristina Beceiro
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge