

APPEAL NO. 211157
SEPTEMBER 2, 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 July 12, 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), extends to an inguinal hernia and a lumbar sprain and strain; (2) the compensable injury of (date of injury), does not extend to a lumbar disc extrusion at L4-5 or lumbar disc herniation at L5-S1; (3) the appellant (claimant) reached maximum medical improvement (MMI) on October 25, 2018; and (4) the claimant's impairment rating (IR) is five percent. The claimant appealed, disputing the ALJ's determinations of extent of injury that were not favorable to him, MMI, and IR. The respondent (carrier) responded, urging affirmance of the disputed extent-of-injury, MMI, and IR determinations. The ALJ's determination that the compensable injury extends to an inguinal hernia and a lumbar sprain and strain was not appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated, in part, that: (1) the compensable injury of (date of injury), extends to a Grade 1 left groin strain; (2) (Dr. R) was the first designated doctor on the claim and was appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division) to determine MMI, IR, and extent of injury; and (3) (Dr. Ra) was the second designated doctor on the claim and was appointed by the Division to determine MMI, IR, and extent of injury. The claimant testified that he was injured on (date of injury), when carrying a long and heavy plastic case up some stairs.

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 a lumbar disc extrusion at L4-5 or lumbar disc herniation at L5-S1 is supported by sufficient evidence and is affirmed.

MMI

The ALJ's determination that the claimant reached MMI on October 25, 2018, 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.

On June 25, 2021, Dr. Ra examined the claimant and provided three alternative certifications. The third certification from Dr. Ra was the only certification that considered and rated the entire compensable injury. The third certification from Dr. Ra considered and rated a Grade 1 left groin strain, a lumbar sprain/strain, and an inguinal hernia 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). In the narrative report, Dr. Ra assigned zero percent impairment for a Grade 1 left groin strain, noting that the strain was resolved and assigned zero percent for the inguinal hernia, noting there was no palpable defect. In her discussion of the lumbar sprain/strain, Dr. Ra noted that a resolved sprain/strain would not result in any structural restriction causing an impairment; therefore, the doctor assigned zero percent whole person impairment for sprain/strain. However, Dr. Ra then mistakenly calculated five percent impairment for the claimant's 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.

It is clear from Dr. Ra's discussion in her narrative report that she rated each condition of the claimant's compensable injury as having zero percent impairment. The ALJ found that the preponderance of the other medical evidence is not contrary to the certification from Dr. Ra that certified the claimant reached MMI on October 25, 2018, with an IR of five percent for a Grade 1 left groin strain, a lumbar sprain/strain, and inguinal hernia. After a mathematical correction, that finding is supported by the evidence. Accordingly, we reverse the ALJ's determination that the claimant's IR is five percent and render a new decision that the claimant's IR is zero percent as mathematically corrected.

SUMMARY

We affirm the ALJ's determination that the compensable injury of (date of injury), does not extend to a lumbar disc extrusion at L4-5 or lumbar disc herniation at L5-S1.

We affirm the ALJ's determination that the claimant reached MMI on October 25, 2018.

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

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

**CORPORATION SERVICE COMPANY
CSC-LAWYERS INCORPORATING SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701.**

Margaret L. Turner
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Carisa Space-Beam
Appeals Judge