

APPEAL NO. 211185
SEPTEMBER 27, 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 (CCH) was held on June 15, 2021, with the record closing on July 6, 2021, 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 adhesive capsulitis; (2) the appellant (claimant) reached maximum medical improvement (MMI) on September 17, 2020; and (3) the claimant's impairment rating (IR) is 6%. The claimant appealed, disputing the ALJ's determinations of extent of injury, MMI, and IR. The claimant also contended that he had good cause for failing to appear at the June 15, 2021, CCH. The respondent (carrier) responded, urging affirmance of the disputed determinations.

DECISION

Affirmed in part and reversed and rendered in part.

The evidence established that on (date of injury), the claimant was injured while moving a shelf that was stuck to another piece of shelving.

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).

GOOD CAUSE FOR FAILURE TO ATTEND THE CCH

The ALJ found that the claimant did not have good cause for his failure to appear at the June 15, 2021, CCH. We review good cause determinations under an abuse-of-discretion standard. Appeals Panel Decision (APD) 002251, decided November 8, 2000. The ALJ's determination will not be set aside unless the ALJ acted without reference to any guiding rules or principles. See *Morrow v. H.E.B., Inc.*, 714 S.W.2d 297 (Tex. 1986). The ALJ's finding that the claimant did not have good cause for his failure to appear at the June 15, 2021, CCH is supported by sufficient evidence and is affirmed.

EXTENT OF INJURY

The ALJ's determination that the compensable injury of (date of injury), does not extend to right shoulder adhesive capsulitis is supported by sufficient evidence and is affirmed.

MMI

The ALJ's determination that the claimant reached MMI on September 17, 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 Texas Department of Insurance, Division of Workers' Compensation (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 found that the preponderance of the evidence supports the certification from (Dr. S), the post-designated doctor required medical examination doctor, and therefore determined the claimant reached MMI on September 17, 2020, with a 6% IR.

Dr. S examined the claimant on February 4, 2021, and opined that the claimant reached MMI on September 17, 2020, and 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. S assessed a 6% IR based on a right shoulder strain. Dr. S stated in his narrative report that he based the 6% IR on range of motion (ROM) measurements taken of the claimant's right shoulder during his exam. Dr. S noted the following ROM measurements: 120° of flexion; 60° of extension; 90° of abduction; 60° of adduction; 50° of external rotation; and 80° of internal rotation. Using Figures 38, 41, and 44 on pages 3/43, 3/44, and 3/45, respectively, of the AMA Guides, Dr. S stated these values result in 10% upper extremity (UE) impairment, and assigned a 6% whole person impairment (WPI). However, Figures 38, 41, and 44 of the AMA Guides provide that 120° of flexion results in 4% UE impairment; 60° of extension results in 0% UE impairment; 90° of abduction results in 4% UE impairment; 60° of adduction results in

0% UE impairment; 50° of external rotation results in 1% UE impairment; and 80° of internal rotation results in 0% UE impairment to a total 9% UE impairment (4 + 0 + 4 + 0 + 1 + 0). Table 3 on page 3/20 of the AMA Guides provides that 9% UE impairment converts to 5% WPI, not 6% WPI as assigned by Dr. S.

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 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. S incorrectly added the UE impairments he assessed for the claimant's right shoulder ROM measurements to 10% UE impairment, then incorrectly assigned a 6% WPI based on that miscalculation. The ALJ found that the preponderance of the medical evidence supports Dr. S's certification. After a mathematical correction that finding is supported by the evidence. Accordingly, we reverse the ALJ's determination that the claimant's IR is 6% and we render a new decision that the claimant's IR is 5% as mathematically corrected.

SUMMARY

We affirm the ALJ's finding that the claimant did not have good cause for his failure to appear at the June 15, 2021, CCH.

We affirm the ALJ's determination that the compensable injury of (date of injury), does not extend to right shoulder adhesive capsulitis.

We affirm the ALJ's determination that the claimant reached MMI on September 17, 2020.

We reverse the ALJ's determination that the claimant's IR is 6%, and we render a new decision that the claimant's IR is 5% as mathematically corrected.

The true corporate name of the insurance carrier is **GREAT AMERICAN ALLIANCE 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.**

Carisa Space-Beam
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Margaret L. Turner
Appeals Judge