

APPEAL NO. 211271
FILED SEPTEMBER 30, 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 1, 2021, with the record closing on June 28, 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 post-traumatic stress disorder (PTSD); (2) the compensable injury of (date of injury), does not extend to mixed depressive or anxiety disorder, adjustment disorder, or insomnia; (3) the respondent (claimant) has not reached maximum medical improvement (MMI); and (4) because the claimant has not reached MMI, an impairment rating (IR) is premature.

The appellant (carrier) appealed that portion of the ALJ's extent-of-injury determination that was against them, as well as the ALJ's MMI and IR determinations. The claimant responded, urging affirmance of the ALJ's determinations.

The ALJ's determination that the compensable injury of (date of injury), does not extend to mixed depressive or anxiety disorder, adjustment disorder, or insomnia was not appealed and has become final pursuant to Section 410.169.

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), at least in the form of acute stress disorder; and (Dr. L) 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 claimant, a pawnbroker, sustained trauma on (date of injury), when an armed robber entered the store in which she worked, pointed a gun at her, and threatened her life.

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), extends to PTSD 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 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.

There are two certifications of MMI and IR in evidence, and both are from Dr. L, the designated doctor. Dr. L examined the claimant on October 8, 2020, and issued alternate certifications. In the first certification, Dr. L considered and rated the carrier-accepted condition of acute stress disorder and placed the claimant at MMI on April 1, 2020, with a zero percent IR. As this certification does not consider or rate PTSD, a condition that we have affirmed is compensable, it cannot be adopted.

Dr. L's second certification considers and rates acute stress disorder, mixed depressive and anxiety disorder, adjustment disorder, hypertension, insomnia, and PTSD. For these conditions, Dr. L placed the claimant at MMI on May 1, 2020, with a zero percent IR. As this certification considers both conditions that have been determined to be non-compensable and a condition that has not yet been determined to be compensable, it cannot be adopted. The ALJ made a finding of fact that Dr. L's certifications are contrary to the preponderance of the medical evidence, and that finding is supported by sufficient evidence.

The ALJ determined that the claimant had not reached MMI, and therefore, an IR is premature. In reaching this conclusion, the ALJ stated in her decision that the claimant credibly asserted that she is still seeing a doctor and that she had not had sufficient treatment for the accepted condition of acute stress disorder by May 1, 2020.

In Appeals Panel Decision (APD) 142008, decided November 5, 2014, the Appeals Panel reversed the ALJ's determination that the claimant had not reached MMI because there was no medical report from any doctor that stated that the claimant had not reached MMI. Similarly, in the present case, there is no such report in evidence. Therefore, we reverse the ALJ's determination that the claimant has not reached MMI, and an IR is premature.

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), extends to PTSD.

We reverse the ALJ's determinations that the claimant has not reached MMI and an IR is premature, and we remand the issues of MMI and IR back to the ALJ for further action consistent with this decision.

REMAND INSTRUCTIONS

Dr. L is the designated doctor in this case. On remand, the ALJ is to determine whether Dr. L is still qualified and available to be the designated doctor. If Dr. L 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 acute stress disorder and PTSD. The ALJ is also to inform the designated doctor that the (date of injury), compensable injury does not extend to mixed depressive or anxiety disorder, adjustment disorder, or insomnia.

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 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) 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 APD 060721, decided June 12, 2006.

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

**CT CORPORATION SYSTEM
1999 BRYAN STREET, SUITE 900
DALLAS, TEXAS 75201-3136.**

Cristina Beceiro
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge