

APPEAL NO. 211412
FILED OCTOBER 21, 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 July 27, 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 aggravation of cervical degenerative disc disease, cervicgia, cervical radiculopathy, cervical spondylosis, right shoulder impingement syndrome, right shoulder bicipital tendinitis, right shoulder bursitis, or right shoulder acromioclavicular (AC) joint sprain; (2) the appellant (claimant) reached maximum medical improvement (MMI) on January 31, 2020; (3) the claimant's impairment rating (IR) is zero percent; and (4) the claimant had disability from November 2, 2019, through January 31, 2020, but did not have disability from February 1, 2020, through the date of the CCH.

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

The ALJ's determination that the claimant had disability from November 2, 2019, through January 31, 2020, 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 a thoracic sprain; and (Dr. H) was properly appointed as designated doctor on the issues of MMI and IR. The claimant, a fleet service clerk, was injured on (date of injury), when she pulled a heavy bag to place on a conveyor belt. She testified that, later the same day, she felt pain in her neck when the tug she was riding in jerked and pushed her forward.

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 aggravation of cervical degenerative disc disease, cervicgia, cervical radiculopathy, cervical spondylosis, right shoulder impingement syndrome, right shoulder bicipital tendinitis, right shoulder bursitis, or right shoulder AC joint sprain is supported by sufficient evidence and is affirmed.

DISABILITY

The ALJ's determination that the claimant did not have disability from February 1, 2020, through the date of the CCH is supported by sufficient evidence and is affirmed.

MMI

The ALJ's determination that the claimant reached MMI on January 31, 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 determined that the claimant reached MMI on January 31, 2020, with a zero percent IR, in accordance with the opinion of Dr. H, the designated doctor. Dr. H examined the claimant on March 13, 2020, and considered and rated a thoracic sprain. As reflected in his narrative report, Dr. H used 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) and placed the claimant in Diagnosis-Related Estimate Thoracolumbar Category I for a zero percent IR; however, on his corresponding Report of Medical Evaluation (DWC-69), Dr. H marked that the claimant did not have any

permanent impairment as a result of the compensable injury. We note that the Appeals Panel has recognized that a certification of no impairment is different and distinct from a zero percent IR. See Appeals Panel Decision (APD) 182223, decided November 14, 2018. Because there is an internal inconsistency between the IR in Dr. H's narrative report and the corresponding DWC-69, his assignment of IR is not adoptable. See APD 152290, decided January 21, 2016, and APD 211351, decided October 7, 2021. Accordingly, we reverse the ALJ's determination that the claimant's IR is zero percent.

As there is no other MMI/IR certification in evidence that can be adopted, we remand the issue of 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), does not extend to aggravation of cervical degenerative disc disease, cervicgia, cervical radiculopathy, cervical spondylosis, right shoulder impingement syndrome, right shoulder bicipital tendinitis, right shoulder bursitis, or right shoulder AC joint sprain.

We affirm the ALJ's determination that the claimant did not have disability from February 1, 2020, through the date of the CCH.

We affirm the ALJ's determination that the claimant reached MMI on January 31, 2020.

We reverse the ALJ's determination that the claimant's IR is zero percent, and we remand the issue of IR back to the ALJ for further action consistent with this decision.

REMAND INSTRUCTIONS

Dr. H is the designated doctor in this case. On remand, the ALJ is to determine whether Dr. H is still qualified and available to be the designated doctor. If Dr. H 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 IR for the (date of injury), compensable injury.

The ALJ is to inform the designated doctor that the date of MMI is January 31, 2020, and the (date of injury), compensable injury is a thoracic sprain. The ALJ is also to inform the designated doctor that the (date of injury), compensable injury does not extend to aggravation of cervical degenerative disc disease, cervicgia, cervical radiculopathy, cervical spondylosis, right shoulder impingement syndrome, right shoulder bicipital tendinitis, right shoulder bursitis, or right shoulder AC joint sprain.

Finally, the ALJ is to inform the designated doctor about the internal inconsistency in his prior certification.

The ALJ is to request the designated doctor to give an opinion on the claimant's IR by rating the entire compensable injury in accordance with the AMA Guides and 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 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 **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 78701-3218.**

Cristina Beceiro
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge