

APPEAL NO. 211474
FILED NOVEMBER 5, 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 August 3, 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 hip acetabular labral degeneration or tearing; (2) the appellant (claimant) reached maximum medical improvement (MMI) on April 27, 2020; and (3) the claimant's impairment rating (IR) is zero percent.

The claimant appealed the ALJ's determinations of extent of injury, MMI, and IR. The respondent (self-insured) responded, urging affirmance of the ALJ's determinations.

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), in the form of at least a right hip strain; and the Texas Department of Insurance, Division of Workers' Compensation (Division) properly appointed (Dr. K) as designated doctor to determine extent of injury, MMI, and IR. The claimant, a transit bus driver, was injured on (date of injury), when the brakes on the bus she was driving failed and she had to push the brake pedal forcefully with her feet and legs. She testified that she felt a pop in her right hip and pain in her right groin and hip.

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 hip acetabular labral degeneration or tearing 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.

The ALJ determined that the claimant reached MMI on April 27, 2020, with a zero percent IR in accordance with the certification of Dr. K, the designated doctor. Dr. K examined the claimant on February 22, 2021, and issued three alternate certifications. The first certification was adopted by the ALJ and considered and rated a strain of unspecified muscles, fascia, and tendons of the right thigh. 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. K assigned zero percent impairment for range of motion measurements of the right hip. As this certification considers and rates a right thigh strain, a condition that has not been accepted and has not yet been determined to be part of the compensable injury, it cannot be adopted. Accordingly, we reverse the ALJ’s determination that the claimant reached MMI on April 27, 2020, with a zero percent IR.

Dr. K’s second certification from his February 22, 2021, examination determined that the claimant had not yet reached MMI. Dr. K considered a strain of unspecified muscles, fascia, and tendons of the right thigh, right hip osteoarthritis with grade 3/grade 4 chondromalacia, acetabular subchondral cysts, and acetabular labral degeneration and tearing. As discussed above, we have affirmed the ALJ’s determination that the compensable injury of (date of injury), does not extend to right hip acetabular labral degeneration or tearing. As this certification considers a condition that

has been determined to be not compensable and conditions that have not been accepted and have not yet been determined to be part of the compensable injury, it cannot be adopted.

Dr. K's third certification from his February 22, 2021, examination also determined that the claimant had not yet reached MMI. Dr. K considered a strain of unspecified muscles, fascia, and tendons of the right thigh and right acetabular labral tearing. As discussed above, we have affirmed the ALJ's determination that the compensable injury of (date of injury), does not extend to right hip acetabular labral degeneration or tearing. As this certification considers a condition that has been determined to be not compensable and a condition that has not been accepted and has not yet been determined to be part of the compensable injury, it cannot be adopted.

In evidence is a prior certification from Dr. K from an examination date of November 9, 2020. In this certification, Dr. K considered a strain of unspecified muscles, fascia, and tendons of the right thigh and a right hip labral tear and determined that the claimant had not reached MMI. We have affirmed the ALJ's determination that the compensable injury of (date of injury), does not extend to right hip acetabular labral degeneration or tearing. As this certification considers a condition that has been determined to be not compensable and a condition that has not been accepted and has not yet been determined to be part of the compensable injury, it cannot be adopted.

Additionally in evidence is a certification from (Dr. H), a doctor selected by the treating doctor to act in his place. Dr. H examined the claimant on January 6, 2021, and found the claimant reached MMI on January 27, 2020, with a zero percent impairment. Dr. H considered and rated a right hip strain. However, as indicated by the ALJ in her decision, Dr. H wrote in his narrative report that the MMI date is April 27, 2020, and not January 27, 2020, as written on his corresponding Report of Medical Evaluation (DWC-69). Because there is an internal inconsistency between the MMI in Dr. H's narrative report and the corresponding DWC-69, his certification is not adoptable. See Appeals Panel Decision (APD) 140237, decided April 11, 2014.

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), does not extend to right hip acetabular labral degeneration or tearing.

We reverse the ALJ's determinations that the claimant reached MMI on April 27, 2020, with a zero percent IR, and we remand the issues of MMI and IR back to the ALJ for further action consistent with this decision.

REMAND INSTRUCTIONS

Dr. K is the designated doctor in this case. On remand, the ALJ is to determine whether Dr. K is still qualified and available to be the designated doctor. If Dr. K 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 a right hip strain. The ALJ is also to inform the designated doctor that the (date of injury), compensable injury does not extend to right hip acetabular labral degeneration or tearing.

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 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 **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**NAME
ADDRESS
CITY, TX ZIP CODE.**

Cristina Beceiro
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge