

APPEAL NO. 211507  
FILED NOVEMBER 8, 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 17, 2021, with the record closing on August 13, 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 osteochondral defect, peroneus longus brevis tendinosis, tenosynovitis, Achilles tendinosis, anterior cruciate ligament tear of the right knee, complex fragmented medial and lateral meniscus tears of the right knee, and medial collateral ligament strain of the right knee; (2) the compensable injury of (date of injury), does not extend to polyarticular degenerative joint disease, small lump right leg, or small lump right ankle; (3) the respondent (claimant) has not reached maximum medical improvement (MMI); and (4) the claimant's impairment rating (IR) cannot be assigned.

The appellant (self-insured) appealed that portion of the ALJ's extent-of-injury determination that was in favor of the claimant, as well as the ALJ's MMI and IR determinations. The claimant responded, urging affirmance of those determinations. That portion of the ALJ's determination that the compensable injury of (date of injury), does not extend to polyarticular degenerative joint disease, small lump right leg, or small lump right ankle was not appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed in part, reversed and rendered in part, and reversed and remanded in part.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury), that extends to a right ankle sprain, a right knee contusion, soft tissue edema, and a right ankle strain; and that (Dr. T) was appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division) to address MMI, IR, and the extent of the claimant's compensable injury. The claimant was injured on (date of injury), when she slipped and fell with her right leg going under her body.

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**

That portion of the ALJ's determination that the compensable injury of (date of injury), extends to osteochondral defect, peroneus longus brevis tendinosis, tenosynovitis, anterior cruciate ligament tear of the right knee, complex fragmented medial and lateral meniscus tears of the right knee, and medial collateral ligament strain of the right knee is supported by sufficient evidence and is affirmed.

The ALJ also determined that the compensable injury extends to Achilles tendinosis. The Texas courts have long established the general rule that "expert testimony is necessary to establish causation as to medical conditions outside the common knowledge and experience" of the fact finder. *Guevara v. Ferrer*, 247 S.W.3d 662 (Tex. 2007). The Appeals Panel has previously held that proof of causation must be established to a reasonable medical probability by expert evidence where the subject is so complex that a fact finder lacks the ability from common knowledge to find a causal connection. Appeals Panel Decision (APD) 022301, decided October 23, 2002. See also *City of Laredo v. Garza*, 293 S.W.3d 625 (Tex. App.—San Antonio 2009, no pet.) citing *Guevara*.

The ALJ in this case noted correctly that Dr. T, the designated doctor appointed by the Division to address the disputed conditions, opined that Achilles tendinosis was not part of the compensable injury, and that this condition is a "disease-of-life, age-related, degenerative" condition. The ALJ also stated that the claimant met her burden of proof on Achilles tendinosis, and determined that the compensable injury extended to Achilles tendinosis.

The Appeals Panel has held that the mere recitation of the claimed conditions in the medical records without attendant explanation of how those conditions may be related to the compensable injury does not establish those conditions are related to the compensable injury within a reasonable degree of medical probability. APD 110054, decided March 21, 2011. Under the facts of this case Achilles tendinosis is a condition that is a matter beyond common knowledge and experience and requires expert medical evidence. Although there are records in this case that show the claimant has been diagnosed with Achilles tendinosis, none of the medical reports causally link Achilles tendinosis to the compensable injury. The ALJ's determination that the compensable injury extends to Achilles tendinosis is not supported by the evidence. Therefore, we reverse that portion of the ALJ's determination that the compensable injury of (date of injury), extends to Achilles tendinosis, and we render a new decision that the compensable injury of (date of injury), does not extend to Achilles tendinosis.

## MMI/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 had not reached MMI and therefore no IR could be assigned based on Dr. T’s February 22, 2021, certification. Dr. T examined the claimant on that date and issued three alternate certifications. In the first certification, Dr. T certified the claimant reached MMI on April 20, 2020, with a three percent IR 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) based on a right knee contusion and right ankle sprain. The parties have agreed the compensable injury extends to a right ankle sprain/strain, right knee contusion, and soft tissue edema, and we have affirmed the ALJ’s determination that the compensable injury extends to osteochondral defect, peroneus longus brevis tendinosis, tenosynovitis, anterior cruciate ligament tear of the right knee, complex fragmented medial and lateral meniscus tears of the right knee, and medial collateral ligament strain of the right knee. Dr. T’s first certification does not rate the compensable injury and cannot be adopted.

The remaining two certifications from Dr. T both certify the claimant had not reached MMI. The first of these two is based on a right ankle sprain, right knee contusion, polyarticular degenerative joint disease, osteochondral defect, soft tissue edema, peroneus lonhus (sic) brevus (sic) tendinosis, tenosynovitis, Achilles tendinosis, small lump in right leg (undiagnosed), small lump in right ankle (undiagnosed), and calcaneal enthesophytes (heel spur). We have affirmed the ALJ’s determination that

the compensable injury does not extend to polyarticular degenerative joint disease, small lump in right leg, small lump in right ankle, and we have reversed and rendered a new decision that the compensable injury does not extend to Achilles tendinosis. Additionally, the condition of calcaneal enthesophytes has not been agreed upon as compensable by the parties nor has it been determined at this point to be part of the compensable injury. It is not clear from Dr. T's report that he based his opinion that the claimant has not reached MMI on a condition that is part of the compensable injury. This certification cannot be adopted.

The second of Dr. T's two remaining certifications that the claimant has not reached MMI is based on a right knee contusion, right knee strain/sprain, right ankle strain/sprain, right ankle osteochondral defect, right ankle peroneus longus tendinosis, right ankle peroneus brevis tendinosis, right knee anterior cruciate ligament tear, right knee fragmented medial and lateral meniscal tears and the diagnosis "small cutaneous lump of right leg of undetermined etiology." We have affirmed the ALJ's determination that the compensable injury does not extend to small lump right leg or small lump to right ankle, and the parties have not agreed, nor has it been determined, that the compensable injury extends to a right knee sprain/strain. It is not clear from Dr. T's report that he based his opinion that the claimant has not reached MMI on a condition that is part of the compensable injury. This certification cannot be adopted.

There is no certification from Dr. T, or any other doctor, certifying the claimant has not reached MMI for the compensable injury. Therefore, we reverse the ALJ's determinations that the claimant has not reached MMI and the claimant's IR cannot be assigned.

There are other certifications in evidence, which are from (Dr. D), the post-designated doctor required medical examination doctor. Dr. D examined the claimant on April 16, 2021, and issued four alternate certifications, all dated April 26, 2021. In the first certification, Dr. D certified the claimant reached MMI on April 20, 2020, with a three percent IR. This certification is based on a right knee contusion, right ankle sprain, right ankle strain, and right ankle soft tissue edema. This certification does not rate the entire compensable injury and cannot be adopted. In the second certification, Dr. D certified the claimant reached MMI on April 20, 2020, with a three percent IR. This certification is based on a right knee contusion and right ankle sprain. This certification does not rate the entire compensable injury and cannot be adopted.

The remaining certifications certify the claimant reached MMI on October 15, 2020, with a three percent IR based on various conditions. The first of these certifications is based on a right knee contusion, right ankle sprain, right ankle strain, right ankle soft tissue edema, and "all of the additionally claimed injuries," which

includes right polyarticular degenerative joint disease and right Achilles tendinosis, among other conditions. This certification does not rate the compensable injury and cannot be adopted. The second of these certifications is based on a right knee sprain and right knee strain, among other conditions. As previously mentioned, a right knee sprain and right knee strain are not part of the compensable injury. This certification cannot be adopted.

The last certification in evidence is from (Dr. VH), a doctor selected by the treating doctor to act in place of the treating doctor. Dr. VH examined the claimant on August 27, 2020, and certified the claimant reached MMI on that same day with a zero percent IR. This certification is based on a right ankle sprain and right knee contusion and does not rate the entire compensable injury. This certification cannot be adopted.

There are no certifications in evidence that can be adopted. Therefore, we remand this case to the ALJ on the issues of MMI and IR for further action consistent with this decision.

### **SUMMARY**

We affirm the ALJ's determination that the compensable injury of (date of injury), extends to osteochondral defect, peroneus longus brevis tendinosis, tenosynovitis, anterior cruciate ligament tear of the right knee, complex fragmented medial and lateral meniscus tears of the right knee, and medial collateral ligament strain of the right knee.

We reverse the ALJ's determination that the compensable injury of (date of injury), extends to Achilles tendinosis, and we render a new decision that the compensable injury of (date of injury), does not extend to Achilles tendinosis.

We reverse the ALJ's determination that the claimant has not reached MMI, and we remand the issue of MMI to the ALJ for further action consistent with this decision.

We reverse the ALJ's determination that the claimant's IR cannot be assigned, and we remand the issue of IR to the ALJ for further action consistent with this decision.

### **REMAND INSTRUCTIONS**

Dr. T is the designated doctor in this case. On remand the ALJ is to determine whether Dr. T is still qualified and available to be the designated doctor. If Dr. T 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 advise the designated doctor that the compensable injury extends to a right ankle sprain/strain, right knee contusion, soft tissue edema, osteochondral defect, peroneus longus brevis tendinosis, tenosynovitis, anterior cruciate ligament tear of the right knee, complex fragmented medial and lateral meniscus tears of the right knee, and medial collateral ligament strain of the right knee. The ALJ is also to advise the designated doctor that the compensable injury does not extend to Achilles tendinosis, polyarticular degenerative joint disease, small lump right leg, or small lump right ankle. The ALJ is to request the designated doctor to give an opinion on the claimant's MMI and rate 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, TEXAS ZIP CODE.**

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Carisa Space-Beam  
Appeals Judge

CONCUR:

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Cristina Beceiro  
Appeals Judge

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Margaret L. Turner  
Appeals Judge