

APPEAL NO. 211537  
FILED NOVEMBER 18, 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 August 16, 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 bipolar-1 disorder, depression, or sleep-wake disorder; (2) the appellant (claimant) reached maximum medical improvement (MMI) on January 23, 2021; and (3) the claimant's impairment rating (IR) is 2%. The claimant appealed the ALJ's extent of injury, MMI, and IR determinations. The respondent (carrier) 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), that extends to a cervical strain, left shoulder strain, head contusion, stress reaction, and a right shoulder strain. The claimant was injured on (date of injury), when he was robbed at gunpoint while working as a general manager for the employer. The claimant testified he was thrown to the floor and was kicked and hit several times in the head with a gun.

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 bipolar-1 disorder, depression, or sleep-wake disorder is supported by sufficient evidence and is affirmed.

**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 Texas Department of Insurance, Division of Workers’ Compensation (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 January 23, 2021, with a 2% IR as certified by (Dr. T), the designated doctor, during the designated doctor exam on January 13, 2021. Dr. T noted in her narrative report that she considered and rated a cervical strain, left shoulder strain, head contusion, stress reaction, and right shoulder strain. The Report of Medical Evaluation (DWC-69) accompanying Dr. T’s narrative for the January 13, 2021, examination does certify a January 23, 2021, date of clinical MMI with a 2% IR. However, when Dr. T explains the MMI date in the corresponding narrative report, she states that the date of MMI is January 13, 2021, which is the date of her examination of the claimant. Dr. T noted that (Dr. G) was asked to evaluate for MMI and IR for the claimant’s “[Post-Traumatic Stress Disorder (PTSD)]/stress reaction,” and that Dr. G placed the claimant at MMI as of the date of his evaluation. We note that the condition of “PTSD” was neither stipulated to by the parties as being compensable nor actually litigated at the CCH. Dr. T then stated that because Dr. G’s evaluation took place after her January 13, 2021, designated doctor examination and the claimant’s condition had plateaued, Dr. T placed the claimant at MMI on January 13, 2021. There is an internal inconsistency between the MMI date Dr. T certified on the DWC-69 and the MMI date Dr. T indicated in the accompanying narrative report.

Because the narrative report and DWC-69 list completely different dates regarding when the claimant reached MMI, we do not consider that internal inconsistency to be a clerical error that can be corrected. See Appeals Panel Decision (APD) 140237, decided April 11, 2014. Accordingly, the ALJ’s determinations that the claimant reached MMI on January 23, 2021, with a 2% IR are reversed.

There is no certification in evidence that can be adopted. Accordingly, 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 bipolar-1 disorder, depression, or sleep-wake disorder.

We reverse the ALJ's determinations that the claimant reached MMI on January 23, 2021, with a 2% IR, and we remand the issues of MMI and IR back 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 inform the designated doctor that the (date of injury), compensable injury is cervical strain, left shoulder strain, head contusion, stress reaction, and right shoulder strain. The ALJ is also to notify the designated doctor that the (date of injury), compensable injury does not extend to bipolar-1 disorder, depression, or sleep-wake disorder. If Dr. T is still qualified and available to be the designated doctor, the ALJ is to notify Dr. T that the condition of PTSD has not at this time been determined to be part of the compensable injury.

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 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 **STARR INDEMNITY & LIABILITY 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.**

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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