

APPEAL NO. 211752
FILED DECEMBER 14, 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 July 6, 2021, and September 15, 2021, with the record closing on September 24, 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 appellant (claimant) reached maximum medical improvement (MMI) on July 2, 2020, and (2) the claimant's impairment rating (IR) is seven percent. The claimant appealed the ALJ's determinations. The respondent (carrier) responded, urging affirmance of the ALJ's determinations.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury), in the form of a right ankle sprain, left knee and lower leg contusions, and a lumbar sprain, and (Dr. K) was appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division) as designated doctor to determine MMI and IR. The claimant testified she was injured on (date of injury), while working as a housekeeper for the employer.

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).

MMI

The ALJ's determination that the claimant reached MMI on July 2, 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 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's IR is seven percent as assigned by Dr. K, the designated doctor. Dr. K examined the claimant on September 11, 2020, and certified the claimant reached MMI on July 2, 2020, with a seven percent IR considering a right ankle sprain, left knee and lower leg contusions, and a lumbar sprain. 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 placed the claimant in Diagnosis-Related Estimate Lumbosacral Category II: Minor Impairment for five percent whole person impairment (WPI) for the lumbar sprain. Based on range of motion (ROM) measurements taken during the examination, Dr. K assigned zero percent impairment for the claimant's left knee and two percent impairment for the claimant's right ankle. Dr. K combined five percent impairment with two percent impairment for a total WPI of seven percent. Dr. K's narrative report reflects the zero percent impairment for the claimant's left knee is in accordance with the AMA Guides. However, Dr. K's two percent impairment for the claimant's right ankle contains an error. Dr. K stated in his narrative report that he assigned two percent impairment based on 10° of eversion. Table 43, Hindfoot Impairments, on page 3/78 of the AMA Guides provides that 10° of eversion results in one percent impairment, not two percent as assessed by Dr. K.

The Appeals Panel has previously stated that, where the certifying doctor's report provides the component parts of the rating that are to be combined and the act of combining those numbers is a mathematical correction which does not involve medical judgment or discretion, the Appeals Panel can recalculate the correct IR from the figures provided in the certifying doctor's report and render a new decision as to the correct IR. See Appeals Panel Decision (APD) 171766, decided September 7, 2017; APD 152464, decided February 17, 2016; APD 121194, decided September 6, 2012; APD 041413, decided July 30, 2004; APD 100111, decided March 22, 2010; and APD 101949, decided February 22, 2011.

In the case on appeal, Dr. K mistakenly assigned two percent impairment for 10° of ankle eversion rather than one percent impairment as provided for in the AMA Guides. Combining one percent impairment for the right ankle and five percent

impairment for the lumbar spine results in six percent WPI, not seven percent impairment as assigned by Dr. K.

The ALJ found that Dr. K's certification that the claimant's IR is seven percent is not contrary to the preponderance of the other evidence. After a mathematical correction, that finding is supported by the evidence. Accordingly, we reverse the ALJ's determination that the claimant's IR is seven percent, and we render a new decision that the claimant's IR is six percent as mathematically corrected.

SUMMARY

We affirm the ALJ's determination that the claimant reached MMI on July 2, 2020.

We reverse the ALJ's determination that the claimant's IR is seven percent, and we render a new decision that the claimant's IR is six percent as mathematically corrected.

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.**

Carisa Space-Beam
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Margaret L. Turner
Appeals Judge