

APPEAL NO. 211816  
FILED DECEMBER 30, 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 September 21, 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 a left ankle sprain, left ankle strain, and left ankle edema; (2) the compensable injury of (date of injury), does not extend to left wrist traumatic arthropathy, left scapholunate ligament advanced collapse, left hand arthropathy, right hand arthropathy, left elbow traumatic arthropathy, left hip posterior superior labral complex tearing/maceration with small intra and parameniscal cyst formation, left hip possible anterior superior labral nondisplaced focal tear, left knee fragmentation of an extrusion of the medial meniscus, left knee medial collateral bursitis with a partial medial collateral ligament tear, left knee bursitis, left knee free margin tear of the lateral meniscus, left knee traumatic arthropathy, left ankle tenosynovitis, left ankle or foot arthropathy, or right knee arthropathy; (3) the appellant (claimant) reached maximum medical improvement (MMI) on August 1, 2020; and (4) the claimant's impairment rating (IR) is one percent.

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

The ALJ's determination that the compensable injury of (date of injury), extends to a left ankle sprain, left ankle strain, and left ankle edema was not appealed, and has become final pursuant to Section 410.169.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated, in part, that: (1) on (date of injury), the claimant sustained a compensable injury at least in the form of a left foot sprain, left knee contusion, left elbow sprain, a third-degree left wrist soft tissue sprain with a scapholunate ligament full thickness tear, left wrist traumatic rupture of other ligament, left wrist scapholunate interval widening up to 6 mm, and a left wrist dorsal intercalated segmental instability; and (2) the Texas Department of Insurance, Division of Workers' Compensation (Division) selected (Dr. C) as designated doctor to determine MMI, IR, and extent of injury. The evidence reflects that the claimant was injured on (date of injury), when she tripped over a guard gate and fell to the ground.

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 left wrist traumatic arthropathy, left scapholunate ligament advanced collapse, left hand arthropathy, right hand arthropathy, left elbow traumatic arthropathy, left hip posterior superior labral complex tearing/maceration with small intra and parameniscal cyst formation, left hip possible anterior superior labral nondisplaced focal tear, left knee fragmentation of an extrusion of the medial meniscus, left knee medial collateral bursitis with a partial medial collateral ligament tear, left knee bursitis, left knee free margin tear of the lateral meniscus, left knee traumatic arthropathy, left ankle tenosynovitis, left ankle or foot arthropathy, or right knee arthropathy is supported by sufficient evidence and is affirmed.

### **MMI**

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.

The ALJ determined that the claimant reached MMI on August 1, 2020. Dr. C, the designated doctor, examined the claimant on January 12, 2021, and issued three alternate certifications that all certified the claimant reached MMI on August 21, 2020, and assessed a one percent IR for loss of range of motion of the claimant's left wrist. In her discussion of the evidence, the ALJ stated that Dr. C provided a reasonable explanation for the selection of the MMI date and assigned a one percent IR 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). The ALJ additionally noted that Dr. C rated the compensable injury consistent with the disposition

of the extent of the compensable injury. The ALJ specifically found in Finding of Fact No. 5 that Dr. C certified that the claimant reached MMI on August 1, 2020, with a one percent IR. The ALJ found in Finding of Fact No. 6 that the preponderance of the other medical evidence is not contrary to the determination of the designated doctor that the claimant reached MMI on August 1, 2020, with a one percent IR. The ALJ then determined that the claimant reached MMI on August 1, 2020. It is clear from the discussion of the evidence that the ALJ was persuaded that the claimant reached MMI as certified by the designated doctor but made a typographical error throughout her decision. The ALJ's finding that the preponderance of the other medical evidence is not contrary to the certification of the designated doctor is supported by the evidence. However, there is no certification from Dr. C, the designated doctor, that the claimant reached MMI on August 1, 2020. The ALJ inadvertently determined the date of MMI to be August 1, 2020, rather than August 21, 2020, as actually certified by Dr. C. Because the ALJ references the incorrect date in connection with Dr. C's MMI date throughout her decision, we cannot make a clerical correction. See Appeals Panel Decision 122622, decided February 15, 2013. Accordingly, we reverse the ALJ's determination that the claimant reached MMI on August 1, 2020, and render a new decision that the claimant reached MMI on August 21, 2020, to conform to the evidence.

## **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's determination that the claimant's IR is one percent is supported by sufficient evidence and is affirmed.

## **SUMMARY**

We affirm the ALJ's determination that the compensable injury of (date of injury), does not extend to left wrist traumatic arthropathy, left scapholunate ligament advanced collapse, left hand arthropathy, right hand arthropathy, left elbow traumatic arthropathy, left hip posterior superior labral complex tearing/maceration with small intra and parameniscal cyst formation, left hip possible anterior superior labral nondisplaced focal tear, left knee fragmentation of an extrusion of the medial meniscus, left knee medial

collateral bursitis with a partial medial collateral ligament tear, left knee bursitis, left knee free margin tear of the lateral meniscus, left knee traumatic arthropathy, left ankle tenosynovitis, left ankle or foot arthropathy, or right knee arthropathy.

We reverse the ALJ's determination that the claimant reached MMI on August 1, 2020, and render a new decision that the claimant reached MMI on August 21, 2020, to conform to the evidence.

We affirm the ALJ's determination that the claimant's IR is one percent.

The true corporate name of the insurance carrier is **REDWOOD FIRE AND CASUALTY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
d/b/a CSC-LAWYERS  
211 EAST 7TH STREET, SUITE 620  
AUSTIN, TEXAS 78701-3218.**

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Cristina Beceiro  
Appeals Judge

CONCUR:

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Carisa Space-Beam  
Appeals Judge

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Margaret L. Turner  
Appeals Judge