

APPEAL NO. 211756  
FILED JANUARY 7, 2022

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 23, 2021, with the record closing on September 27, 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 first certification of maximum medical improvement (MMI) and assigned impairment rating (IR) from (Dr. S) on September 3, 2020, became final under Section 408.123 and 28 Tex. Admin. Code § 130.12 (Rule 130.12); and (2) the respondent's (claimant) IR is 24%. The appellant (carrier) appealed the ALJ's determinations. There is no response in the appeal file from the claimant to the carrier's appeal.

**DECISION**

Reversed and rendered.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury), in the form of at least a lumbar sprain/strain, right hip sprain/strain, and right hip labral tear; Dr. S was properly appointed as the designated doctor on the issues of MMI, IR, and extent of injury; and the correct date of MMI is March 4, 2020, the statutory date in this case, as certified by Dr. S and (Dr. H). The evidence indicates that the claimant was injured on (date of injury), while working as a stocker. He was injured after going down a stepladder carrying a heavy case and felt pain in his right hip, groin, and lower back.

**FINALITY**

Section 408.123(e) provides that, except as otherwise provided by Section 408.123, an employee's first valid certification of MMI and first valid assignment of an IR is final if the certification or assignment is not disputed before the 91st day after the date written notification of the certification or assignment is provided to the employee and the carrier by verifiable means. Rule 130.12(b) provides, in part, that the first MMI/IR certification must be disputed within 90 days of delivery of written notice through verifiable means, including IRs related to extent-of-injury disputes. The notice must contain a copy of a valid Report of Medical Evaluation (DWC-69), as described in Rule 130.12(c).

Section 408.123(f) provides in part:

(f) An employee's first certification of [MMI] or assignment of an [IR] may be disputed after the period described by Subsection (e) if:

(1) compelling medical evidence exists of:

(A) a significant error by the certifying doctor in applying the appropriate American Medical Association guidelines or in calculating the [IR];

(B) a clearly mistaken diagnosis or a previously undiagnosed medical condition;  
or

(C) improper or inadequate treatment of the injury before the date of the certification or assignment that would render the certification or assignment invalid.

The ALJ found, in part, that the certification of MMI and assigned IR from Dr. S on September 3, 2020, was the first valid certification in this case that was subject to finality. He also found that the carrier received written notice by verifiable means of the September 3, 2020, certification but did not file a timely dispute. Those findings are supported by sufficient evidence. The ALJ also found that the carrier did not prove that any of the exceptions under Section 408.123 and Rule 130.12 to the 90-day finality rule apply in this case.

Dr. S examined the claimant on August 25, 2020, and certified on September 3, 2020, that the claimant reached MMI on March 4, 2020. 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), she assigned a 24% IR for the compensable conditions of a lumbar sprain/strain, right hip sprain/strain, and a right hip labral tear. Dr. S's 24% IR is comprised of a 5% impairment under Diagnosis-Related Estimate (DRE) Lumbosacral Category II for the lumbar sprain/strain and 20% impairment for range of motion (ROM) measurements of the right hip. Dr. S then combined the impairments for the lumbar and right hip which resulted in a 24% whole person impairment (WPI).

Dr. S's corresponding narrative report noted the following ROM measurements for the claimant's right hip: 32° flexion, 12° extension; 8° internal rotation, 10° external rotation; 15° abduction, and 10° adduction. In a response to a letter of clarification dated July 5, 2021, Dr. S explained that using Table 40 on page 3/78 of the AMA Guides, she assigned 8% WPI for flexion, 0% WPI for extension, 4% WPI for internal rotation, 4% WPI for external rotation, 2% WPI for abduction, and 2% WPI for adduction, resulting in 20% impairment for the right hip. However, Table 40 provides

that 12° of extension results in 2% WPI, not 0% WPI as indicated by Dr. S. Using these calculations, Dr. S assigned 20% impairment for the claimant's right hip, instead of 22%. Combining the 22% right hip impairment with the 5% lumbar impairment results in a WPI of 26%, instead of 24% as certified by Dr. S.

Dr. S's narrative report shows that she erred in assigning 0% WPI for right hip extension rather than 2% WPI. We hold that this is compelling medical evidence in this case of a significant error by Dr. S in calculating her 24% IR, and that the exception found in Section 408.123(f)(1)(A) applies. Accordingly, we reverse the ALJ's determination that the first certification of MMI and IR from Dr. S on September 3, 2020, became final under Section 408.123 and Rule 130.12. We render a new decision that the first certification of MMI and IR from Dr. S on September 3, 2020, did not become final under Section 408.123 and Rule 130.12.

### **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. 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 found that Dr. S's certification dated September 3, 2020, is not contrary to the preponderance of the evidence and determined that the claimant's IR is 24%. As discussed above, Dr. S assigned 5% impairment under DRE Lumbosacral Category II for the lumbar sprain/strain and 20% impairment for ROM measurements of the right hip. Dr. S explained in a response to a July 5, 2021, letter of clarification that she used Table 40, page 3/78 of the AMA Guides and assessed 8% WPI for flexion, 0% WPI for extension, 4% WPI for internal rotation, 4% WPI for external rotation, 2% WPI for abduction, and 2% WPI for adduction, resulting in 20% impairment for the right hip. Combining the hip impairments resulted in a total of 20% impairment for the right hip. Dr. S then combined 20% impairment for the right hip with 5% impairment for lumbar spine which results in 24% IR for the claimant's compensable injury.

In Section 3.2, "The Lower Extremity," page 3/75, the AMA Guides provide, in part, that:

If the patient has several impairments of the same lower extremity part, such as the leg, or impairments of different parts, such as the ankle and a

toe, the whole-person [WP] estimates for the impairments are *combined* [emphasis in original] (Combined Values Chart, p. 322). If both extremities are impaired, the impairment of each should be evaluated and expressed in terms of the [WP], and the two percents should be *combined* [emphasis in original] (Combined Values Chart, p. 322).

In Section 3.2e, “[ROM],” on page 3/77, the AMA Guides provide, in part, that “[e]valuating permanent impairment of the lower extremity according to [ROM] is a suitable method.” Section 3.2e does not require that a certifying doctor must only use the most severe impairment for an individual direction of motion within the same table [Tables 40 through 43]. See *also* Appeals Panel Decision (APD) 110741, decided July 25, 2011.

However, as explained previously, Dr. S mistakenly assigned 0% WPI for 12° of extension of the right hip. Table 40, page 3/78 provides mild impairment, 2% WPI, for a ROM measured 10°-19°.

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 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. Under the facts of this case, the certifying doctor’s assigned IR can be mathematically corrected based on the documented measurements for the right hip.

Combining 2% WPI for loss of ROM based on 12° of extension with the previous impairments assigned based on Table 40 results in 22% impairment for the right hip rather than 20% as assigned by Dr. S. Combining 22% impairment for the right hip with 5% impairment for the lumbar spine results in a WPI for the compensable injury of 26%, rather than 24%.

The ALJ found that the preponderance of the other medical evidence is not contrary to Dr. S’s assigned IR, and after a mathematical correction, that finding is supported by the evidence. Accordingly, we reverse the ALJ’s determination that the claimant’s IR is 24%, and we render a new decision that the claimant’s IR is 26%, as mathematically corrected.

## **SUMMARY**

We reverse the ALJ's determination that the certification of MMI and IR from Dr. S on September 3, 2020, became final under Section 408.123 and Rule 130.12, and we render a new decision that the certification of MMI and IR from Dr. S on September 3, 2020, did not become final under Section 408.123 and Rule 130.12.

We reverse the ALJ's determination that the claimant's IR is 24%, and we render a new decision that the claimant's IR is 26%, as mathematically corrected.

The true corporate name of the insurance carrier is **SAFETY NATIONAL CASUALTY CORPORATION** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM  
1999 BRYAN STREET, SUITE 900  
DALLAS, TEXAS 75201-3136.**

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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