

APPEAL NO. 212037
FEBRUARY 2, 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 (CCH) was held on November 4, 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 November 16, 2020; (2) the claimant's impairment rating (IR) is zero percent; and (3) the claimant did not have disability resulting from the compensable injury sustained on (date of injury), from November 20, 2020, through the date of the CCH. 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 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, lumbar strain, and right elbow contusion. The evidence reflects the claimant was injured on (date of injury), when he fell after the ladder he was using broke.

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).

DISABILITY

The ALJ's determination that the claimant did not have disability resulting from the compensable injury sustained on (date of injury), from November 20, 2020, through the date of the CCH 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 only certification in evidence is from (Dr. D), the Division-appointed designated doctor. Dr. D examined the claimant on December 22, 2020, and in a certification dated December 30, 2020, certified the claimant reached MMI on November 16, 2020, with a zero percent IR considering a cervical strain, lumbar strain, and a right elbow contusion.

In her discussion of the evidence the ALJ initially stated "[it] is found that the certification by [Dr. D] is contrary to the preponderance of the other medical evidence and cannot be adopted." However, the ALJ also stated in her discussion that "[t]he certification by the designated doctor is not contrary to the preponderance of the other medical evidence and is adopted." The ALJ found in Finding of Fact No. 3 that Dr. D, the designated doctor, certified the claimant reached MMI on November 16, 2020, with a zero percent IR, and the preponderance of the other medical evidence is not contrary to this certification. The ALJ determined in Conclusion of Law Nos. 3 and 4, the decision and order, and the decision portion that the claimant reached MMI on November 16, 2020, with a zero percent IR. The ALJ's discussion of the evidence is inconsistent with her determinations of MMI and IR. Accordingly, we reverse the ALJ's determinations that the claimant reached MMI on November 16, 2020, with a zero percent IR, and we remand the issues of MMI and IR to the ALJ for further action consistent with this decision. See Appeals Panel Decision (APD) 210422, decided May 26, 2021; APD 180080, decided March 8, 2018; APD 160494, decided May 2, 2016.

SUMMARY

We affirm the ALJ's determination that the claimant did not have disability resulting from the compensable injury sustained on (date of injury), from November 20, 2020, through the date of the CCH.

We reverse the ALJ's determinations that the claimant reached MMI on November 16, 2020, with a zero percent IR, and we remand the issues of MMI and IR to the ALJ for further action consistent with this decision.

REMAND INSTRUCTIONS

On remand the ALJ is to make a determination of MMI and IR that is supported by the evidence and to clarify the inconsistency between her findings and determinations and the discussion of the evidence.

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 **ZURICH AMERICAN 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