

APPEAL NO. 212063
FILED FEBRUARY 9, 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 18, 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 right shoulder injury (grade 1 sprain/strain); (2) the compensable injury of (date of injury), does not extend to a cervical protrusion/herniation at C3-4, a cervical annular tear/protrusion/herniation at C4-5, a cervical protrusion/herniation at C5-6, or abnormal straightening lumbar curvature suggesting muscle spasms; (3) the appellant (claimant) reached maximum medical improvement (MMI) on July 6, 2021; (4) the claimant's impairment rating (IR) is zero percent; (5) the claimant had disability as a result of the compensable injury beginning April 23, 2021, and continuing through July 6, 2021; and (6) the claimant did not have disability as a result of the compensable injury beginning July 7, 2021, and continuing through the date of the CCH. The claimant appealed, disputing the ALJ's determinations of extent of injury that were not favorable to him, MMI, IR, and that portion of the disability determination that was not favorable to him. The respondent (carrier) responded, urging affirmance of the disputed extent of injury, MMI, IR, and disability determinations. The ALJ's determinations that the compensable injury extends to a right shoulder injury (grade 1 sprain/strain) and that the claimant had disability as a result of the compensable injury beginning April 23, 2021, and continuing through July 6, 2021, were not appealed and have become final pursuant to Section 410.169.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated, in part, that: (1) the claimant sustained a compensable injury in the form of at least a lumbar sprain, thoracic sprain, and cervical sprain; and (2) the Texas Department of Insurance, Division of Workers' Compensation (Division) selected (Dr. F) as designated doctor to opine on the issues of MMI, IR, and extent of injury. The claimant testified that he was injured on (date of injury), when cleaning out a pool.

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 a cervical protrusion/herniation at C3-4, cervical annular tear/protrusion/herniation at C4-5, a cervical protrusion/herniation at C5-6, or abnormal straightening lumbar curvature suggesting muscle spasms is supported by sufficient evidence and is affirmed.

DISABILITY

The ALJ's determination that the claimant did not have disability as a result of the compensable injury beginning July 7, 2021, and continuing through the date of the CCH is supported by sufficient evidence and is affirmed.

MMI

The ALJ's determination that the claimant reached MMI on July 6, 2021, 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.

On July 6, 2021, Dr. F examined the claimant and provided two alternative certifications. Neither of the certifications rated the entire compensable injury. A letter of clarification was sent to Dr. F on October 20, 2021, attaching additional medical records. As a result of his review of the additional records, Dr. F opined that the compensable injury of (date of injury), extended to a right shoulder injury (grade 1 sprain/strain). Dr. F then provided a third certification that considered and rated the entire compensable injury. The third certification from Dr. F considered and rated a cervical sprain, thoracic sprain, lumbar sprain, and right shoulder injury (grade 1

sprain/strain) 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). In the narrative report, Dr. F assigned zero percent impairment for a lumbar sprain, placing the claimant in Lumbosacral Diagnosis-Related Estimate (DRE) Category I: Complaints or Symptoms. Dr. F assigned zero percent for the thoracic sprain, placing the claimant in Thoracolumbar DRE Category I: Complaints or Symptoms. Dr. F assigned zero percent impairment for a cervical sprain, placing the claimant in Cervicothoracic DRE Category I: Complaints or Symptoms.

Dr. F documented the following range of motion (ROM) measurements for the claimant's right shoulder, noting how he rounded the actual measurements taken: flexion 172° (170°); extension 57° (60°); abduction 186° (190°); adduction 45° (50°); internal rotation 87° (90°); and external rotation 89° (90°). Dr. F then assigned zero percent impairment for the claimant's right shoulder. However, Dr. F mistakenly assigned zero percent impairment for the loss of ROM for the measurement of flexion. The AMA Guides provide in Figure 38 on page 3/43 that 170° of flexion results in one percent upper extremity (UE) impairment. Table 3 on page 3/20 of the AMA Guides provides that one percent UE impairment converts to one percent whole person impairment. 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 172488, decided December 18, 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; APD 101949, decided February 22, 2011; APD 211185, decided September 27, 2021; and APD 211141, decided September 13, 2021.

The ALJ found that the preponderance of the other medical evidence is not contrary to the certification from Dr. F that the claimant reached MMI on July 6, 2021, with an IR of zero percent for a lumbar sprain, thoracic sprain, cervical sprain, and right shoulder injury (grade 1 sprain/strain). After a mathematical correction, that finding is supported by the evidence. Accordingly, we reverse the ALJ's determination that the claimant's IR is zero percent and render a new decision that the claimant's IR is one percent as mathematically corrected.

SUMMARY

We affirm the ALJ's determination that the compensable injury of (date of injury), does not extend to a cervical protrusion/herniation at C3-4, cervical annular tear/protrusion/ herniation at C4-5, a cervical protrusion/herniation at C5-6, or abnormal straightening lumbar curvature suggesting muscle spasms.

We affirm the ALJ's determination that the claimant did not have disability as a result of the compensable injury beginning July 7, 2021, and continuing through the date of the CCH.

We affirm the ALJ's determination that the claimant reached MMI on July 6, 2021.

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

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**RICHARD J. GERGASKO
2200 ALDRICH STREET
AUSTIN, TEXAS 78723.**

Margaret L. Turner
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Carisa Space-Beam
Appeals Judge