

APPEAL NO. 212106
FILED FEBRUARY 14, 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 December 1, 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), does not extend to slipping rib syndrome, intercostal neuritis, or thoracic outlet syndrome; (2) the appellant (claimant) reached maximum medical improvement (MMI) on December 21, 2020; and (3) the claimant's impairment rating (IR) is two percent. The claimant appealed, disputing the ALJ's determinations of extent of injury, MMI, and IR. The respondent (carrier) responded, urging affirmance of the disputed extent of injury, MMI, and IR determinations.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated, in part, that: (1) the carrier has accepted a contusion of the right shoulder, strain of unspecified muscle fascia and tendon at right shoulder and right upper arm level, and sternomanubrial joint subluxation as components of the compensable injury; and (2) the Texas Department of Insurance, Division of Workers' Compensation (Division) appointed (Dr. L) as designated doctor to address the issues of MMI, IR, and extent of injury. The claimant testified that she was injured on (date of injury), when she slipped and fell.

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 slipping rib syndrome, intercostal neuritis, or thoracic outlet syndrome is supported by sufficient evidence and is affirmed.

MMI

The ALJ's determination that the claimant reached MMI on December 21, 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.

On August 3, 2021, Dr. L examined the claimant and provided three alternative certifications. Only one of the certifications rated and considered the compensable injury of a contusion of the right shoulder, strain of unspecified muscle fascia and tendon at right shoulder and right upper arm, and sternomanubrial joint subluxation. In that certification, Dr. L, 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), certified that the claimant reached MMI on December 20, 2020, and assessed two percent impairment for the compensable injury. After a physical examination and review of the medical records, Dr. L explained that the claimant reached MMI at the time of his first examination on December 20, 2020. A letter of clarification (LOC) was sent to Dr. L on September 30, 2021, informing him that the records indicate that he first saw the claimant on December 21, 2020, rather than December 20, 2020, as stated in his report. In response to the LOC, Dr. L provided three amended certifications containing the corrected date of his earlier examination of the claimant as December 21, 2020, and updating the MMI date to that date. The third of these certifications from Dr. L considered and rated a contusion of the right shoulder, strain of unspecified muscle fascia and tendon at right shoulder and right upper arm level and sternomanubrial joint subluxation. Dr. L assessed zero percent impairment for the sternomanubrial joint subluxation.

Dr. L noted the following range of motion (ROM) measurements for the claimant's right shoulder: flexion 170°; extension 50°; abduction 170°; adduction 40°; internal rotation 20°; and external rotation 100°. Dr. L assigned two percent whole person impairment (WPI) for the claimant's right shoulder. Dr. L correctly assigned one percent upper extremity (UE) impairment for loss of ROM for flexion and zero percent

UE impairment for ROM of extension, abduction, adduction, and external rotation. However, Dr. L mistakenly assigned two percent UE impairment for the loss of ROM for the measurement of internal rotation. The AMA Guides provide in Figure 44 on page 3/45 that 20° of internal rotation results in four percent UE impairment. Four percent UE impairment added to one percent UE assessed for flexion results in five percent UE impairment. Table 3 on page 3/20 of the AMA Guides provides that five percent UE impairment converts to three percent WPI. 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. L that the claimant reached MMI on December 21, 2020, with an IR of two percent for a contusion of the right shoulder, strain of unspecified muscle fascia and tendon at right shoulder and right upper arm level, and sternomanubrial joint subluxation. After a mathematical correction, that finding is supported by the evidence. Accordingly, we reverse the ALJ's determination that the claimant's IR is two percent and render a new decision that the claimant's IR is three percent as mathematically corrected.

SUMMARY

We affirm the ALJ's determination that the compensable injury of (date of injury), does not extend to slipping rib syndrome, intercostal neuritis, or thoracic outlet syndrome.

We affirm the ALJ's determination that the claimant reached MMI on December 21, 2020.

We reverse the ALJ's determination that the claimant's IR is two percent and we render a new decision that the claimant's IR is three 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, PRESIDENT
2200 ALDRICH STREET
AUSTIN, TEXAS 78723.**

Margaret L. Turner
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Carisa Space-Beam
Appeals Judge