

APPEAL NO. 220075
FILED MARCH 3, 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 December 2, 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 a left knee medial meniscus tear; (2) the appellant (claimant) reached maximum medical improvement (MMI) on August 19, 2020; and (3) the claimant's impairment rating (IR) is five percent. The claimant appealed the ALJ's determinations of extent of injury, MMI, and IR. The respondent (carrier) responded to the claimant's appeal, 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 (date of injury), in the form of at least bilateral wrist contusions, bilateral knee contusions, and a right ankle sprain. The parties additionally stipulated that (Dr. S) was appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division) as designated doctor on the issues of extent of injury, MMI, and IR. The evidence reflected that the claimant, while working as a substitute teacher on (date of injury), was injured when she tripped over a student's backpack. We note that in her decision, the ALJ mistakenly referred to the disputed condition as a left knee "medical" meniscus tear instead of a left knee medial meniscus tear both in the Decision and Order section at the top and the Decision section at the end.

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 left knee medial meniscus tear is supported by sufficient evidence and is affirmed.

MMI

The ALJ's determination that the claimant reached MMI on August 19, 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 shall be based on the injured employee's condition as of the MMI date considering the medical record and the certifying examination and the doctor assigning the IR shall:

- (A) identify objective clinical or laboratory findings of permanent impairment for the current compensable injury;
- (B) document specific laboratory or clinical findings of an impairment;
- (C) analyze specific clinical and laboratory findings of an impairment;
- (D) compare the results of the analysis with the impairment criteria and provide the following:
 - (i) [a] description and explanation of specific clinical findings related to each impairment, including zero percent [IRs]; and
 - (ii) [a] description of how the findings relate to and compare with the criteria described in the applicable chapter of 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 doctor's inability to obtain required measurements must be explained.

The ALJ determined that the claimant reached MMI on August 19, 2020, with a five percent IR in accordance with the certification of Dr. S, the designated doctor. The

record indicates that the designated doctor examined the claimant on March 3, 2021, and issued alternate certifications: one based on the carrier-accepted conditions and one based on the accepted and disputed conditions. Dr. S assigned the five percent IR based on the carrier-accepted conditions of bilateral wrist contusions, bilateral knee contusions, and a right ankle sprain using the AMA Guides. Dr. S stated in his narrative report that he used the range of motion (ROM) measurements from the August 19, 2020, physical therapy visit, and for the right wrist radial deviation and ulnar deviation, he used (Dr. A) November 10, 2020, exam. However, Dr. S did not provide all the measurements he used to calculate the claimant's IR in his narrative report. Dr. S assessed a zero percent impairment for the bilateral knees based on ROM. He then assigned a four percent whole person impairment (WPI) for the bilateral wrists based on ROM, but failed to list the measurements for radial and ulnar deviation. For the right ankle impairment, Dr. S noted that there is no impairment for dorsiflexion or plantarflexion according to Table 42 on page 3/78 of the AMA Guides. He then stated that there was 17° of eversion and assigned a one percent WPI for that measurement. However, Table 43 on page 3/78 of the AMA Guides indicates that 17° of eversion should be a zero percent impairment, not one percent impairment as indicated by Dr. S. He then combined the four percent impairment for the wrists with the one percent impairment for the right ankle for a total of a five percent WPI for the compensable injury.

The Appeals Panel has held that a mathematical correction to a certification of an IR may be made when doing so simply corrects an obvious mathematical error and does not involve the exercise of judgment as to what the proper figures were. See Appeals Panel Decision (APD) 101949, decided February 22, 2011. However, in the case on appeal, the ROM measurements that Dr. S used came from a physical therapy examination report that was not in evidence. As such, we cannot determine what the correct ROM measurements are regarding the right ankle and whether Dr. S's assigned IR for the right ankle requires a mathematical correction. Therefore, we reverse the ALJ's determination that the claimant's IR is five percent.

The only other certification in evidence is Dr. S's alternate certification that the claimant had not reached MMI based on the accepted and disputed conditions. Because this certification is based on a non-compensable condition, it cannot be adopted.

As there is no other certification in evidence that can be adopted, we remand the issue of IR to the ALJ for further action consistent with this decision.

SUMMARY

We affirm the ALJ's determination that the compensable injury of (date of injury), does not extend to a left knee medial meniscus tear.

We affirm the ALJ's determination that the claimant reached MMI on August 19, 2020.

We reverse the ALJ's determination that the claimant's IR is five percent, and we remand the issue of IR back to the ALJ for further action consistent with this decision.

REMAND INSTRUCTIONS

Dr. S is the designated doctor in this case. On remand, the ALJ is to determine whether Dr. S is still qualified and available to be the designated doctor. If Dr. S is no longer qualified or available to serve as the designated doctor, then another designated doctor is to be appointed to opine on the issue of IR for the (date of injury), compensable injury.

On remand the ALJ is to inform the designated doctor that the compensable injury of (date of injury), extends to bilateral wrist contusions, bilateral knee contusions, and a right ankle sprain but does not include a left knee medial meniscus tear. The ALJ is then to request that the designated doctor assign an IR for the compensable injury based on the injured employee's condition as of the MMI date of August 19, 2020, considering the medical record and the certifying examination. The ALJ is to inform the designated doctor of the error in the IR calculation and instruct the designated doctor to provide all measurements that were used to calculate the impairment rating per Rule 130.1(c)(3).

The parties are to be provided with the ALJ's letter to the designated doctor, the designated doctor's response, and are to be allowed an opportunity to respond. If another designated doctor is appointed, the parties are to be provided with the Presiding Officer's Directive to Order Designated Doctor Examination, the designated doctor's report, and are to be allowed an opportunity to respond. The ALJ is to make a determination on IR which is supported by the evidence and consistent with this decision.

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 **PUBLIC WC PROGRAM** and the name and address of its registered agent for service of process is

**RICK EDWARDS, PRESIDENT
JERRY EDWARDS, EDWARDS RISK MANAGEMENT, INC.
1004 MARBLE HEIGHTS DR.
MARBLE FALLS, TEXAS 78654.**

Cristina Beceiro
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge