

APPEAL NO. 220140  
FILED MARCH 15, 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 7, 2021, with the record closing on December 10, 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 lumbar sprain, aggravation of L3-4 disc herniation, aggravation of L4-S1 disc herniation, and L4 radiculitis; (2) the respondent (claimant) reached maximum medical improvement (MMI) on May 11, 2021; and (3) the claimant's impairment rating (IR) is 10%. The appellant (self-insured) appeals the ALJ's determinations of extent of injury, MMI, and IR. The claimant responded, urging affirmance of the disputed issues.

DECISION

Affirmed in part, and reversed and rendered in part.

The parties stipulated, in part, that: the claimant sustained a compensable injury on (date of injury), that consisted of a lumbar strain; and (Dr. C) was appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division) as the designated doctor to address the issues of extent of injury, MMI, and IR. The claimant testified that he was injured on (date of injury), when the air mechanism broke on the seat of the truck he was driving.

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

That portion of the ALJ's determination that the compensable injury of (date of injury), extends to a lumbar sprain, an aggravation of L3-4 disc herniation, an aggravation of L4-5 disc herniation, and L4 radiculitis is supported by sufficient evidence and is affirmed.

The issue before the ALJ to decide included aggravation of L4-S1 disc herniations. As noted above, the ALJ's determination regarding aggravation of the L4-5 disc herniation was affirmed.

The Appeals Panel has previously held that proof of causation must be established to a reasonable medical probability by expert evidence where the subject is so complex that a fact finder lacks the ability from common knowledge to find a causal connection. Appeals Panel Decision 022301, decided October 23, 2002. See also *Guevara v. Ferrer*, 247 S.W.3d 662 (Tex. 2007). To be probative, expert testimony must be based on reasonable medical probability. *City of Laredo v. Garza*, 293 S.W.3d 625 (Tex. App.—San Antonio 2009, no pet.) citing *Insurance Company of North America v. Myers*, 411 S.W.2d 710, 713 (Tex. 1966).

The ALJ correctly noted in her discussion of the evidence that the claimant relied on the opinions of Dr. C, the designated doctor, (Dr. R), the claimant's treating doctor, and (Dr. H), a doctor referred by the treating doctor, to establish causation for the compensable conditions in dispute.

Dr. C, the designated doctor, was appointed by the Division for purposes of the extent-of-injury issue. Dr. C examined the claimant on May 11, 2021. Dr. C provided an analysis of the claimant's clinical findings and timeline and gave a medical causation opinion statement. However, in both the analysis and causation opinion, Dr. C does not opine that the compensable injury aggravated an L5-S1 disc herniation. Dr. C only opined that the claimant's compensable injury extended to a lumbar sprain, aggravation of L3-4 and L4-5 herniations, and L4 radiculitis.

Dr. R, the claimant's treating doctor, provided a causation narrative dated March 23, 2021. Dr. R discussed the claimant's medical records and provided a causation statement regarding the conditions of lumbar sprain, aggravation of the L3-4 disc herniation, and aggravation of L4-5 disc herniation. Dr. R notes that the claimant had pre-existing degenerative disc herniations at L5-S1 and discusses "the disputed conditions" in his narrative. However, the causation letter does not conclude that the claimant's compensable injury of (date of injury), caused an aggravation of the L5-S1 disc herniation.

Dr. H, a referral doctor, examined the claimant on September 23, 2021, and provided an extent-of-injury causation analysis. Dr. H discussed the claimant's mechanism of injury and provided a review of the claimant's relevant medical records. Dr. H cited medical studies and opined that the mechanism of the claimant's injury on (date of injury), caused the lumbar sprain, aggravation of disc herniations at L3-4 and L4-5, and L4 radiculitis. However, Dr. H did not specifically opine that the compensable injury of (date of injury), caused an aggravation of the L5-S1 disc herniation.

In reviewing a “great weight” challenge, we must examine the entire record to determine if: (1) there is only “slight” evidence to support the finding; (2) the finding is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust; or (3) the great weight and preponderance of the evidence supports its nonexistence. See *Cain, supra*.

In applying this standard to the facts of this case, the ALJ’s determination that the compensable injury of (date of injury), extends to an aggravation of the L5-S1 disc herniation is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. Accordingly, we reverse that portion of the ALJ’s determination that the compensable injury of (date of injury), extends to an aggravation of the L5-S1 disc herniation and render a new decision that the compensable injury of (date of injury), does not extend to an aggravation of the L5-S1 disc herniation.

### **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 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 ALJ found that the preponderance of the evidence is contrary to the report of Dr. C, the designated doctor. That finding is supported by sufficient evidence. The ALJ found that the opinion of the treating doctor referral physician, Dr. H, that the claimant reached MMI on May 11, 2021, with a 10% IR for the compensable injury is supported by the preponderance of the medical evidence.

As previously noted, that portion of the ALJ’s extent-of-injury determination that the compensable injury of (date of injury), extends to an aggravation of the L5-S1

herniation was reversed and a new decision was rendered that the compensable injury of (date of injury), does not extend to an aggravation of the L5-S1 herniation.

However, a review of the record reflects that Dr. H's certification that the claimant reached MMI on May 11, 2021, with a 10% IR 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) only rated and considered a lumbar strain, lumbar sprain, an aggravation of an L3-4 disc herniation, an aggravation of an L4-5 disc herniation, and L4 radiculitis. Dr. H did not consider and rate an aggravation of an L5-S1 disc herniation. Dr. H placed the claimant in Lumbar Sacral Diagnosis-Related Estimate (DRE) Category III: Radiculopathy based on the claimant's loss of relevant reflexes.

The ALJ's determination that the claimant reached MMI on May 11, 2021, with a 10% IR is supported by sufficient evidence and is affirmed.

### **SUMMARY**

We affirm that portion of the ALJ's determination that the compensable injury of (date of injury), extends to a lumbar sprain, an aggravation of L3-4 disc herniation, an aggravation of L4-5 disc herniation, and L4 radiculitis.

We reverse that portion of the ALJ's determination that the compensable injury of (date of injury), extends to an aggravation of the L5-S1 disc herniation and render a new decision that the compensable injury of (date of injury), does not extend to an aggravation of the L5-S1 disc herniation.

We affirm the ALJ's determination that the claimant reached MMI on May 11, 2021.

We affirm the ALJ's determination that the claimant's IR is 10%.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**(NAME)**  
**(ADDRESS)**  
**(CITY), TEXAS (ZIP CODE).**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Cristina Beceiro  
Appeals Judge

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Carisa Space-Beam  
Appeals Judge