

APPEAL NO. 220145
FILED MARCH 16, 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 14, 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 respondent (claimant) reached maximum medical improvement (MMI) on June 7, 2021; and (2) the claimant's impairment rating (IR) is 15%. The appellant (carrier) appealed, disputing the ALJ's determinations of MMI and IR. The claimant responded urging affirmance of the ALJ's determinations of MMI and IR.

DECISION

Affirmed in part, and reversed and remanded in part.

The evidence reflects that the claimant was injured when the golf cart he was driving was struck by another vehicle. The parties stipulated, in part, that: (1) the claimant sustained a compensable injury on (date of injury); (2) the carrier accepted a cervical sprain, a cervical strain, a lumbar sprain, a lumbar strain, and a right hip contusion as the compensable injury; and (3) the Texas Department of Insurance, Division of Workers' Compensation (Division) appointed (Dr. F) as the designated doctor for the purpose of MMI and IR.

The ALJ is the sole judge of the weight and credibility to 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).

MMI

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.

The ALJ's determination that the claimant reached MMI on June 7, 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.

In Section 3.2e, titled "[range of motion (ROM)]," page 3/77, 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) provides, in part, that "[e]valuating permanent impairment of the lower extremity according to its [ROM] is a suitable method." Section 3.2e does not require that a certifying doctor must only use the most severe impairment for an individual direction of motion within the same table (Tables 40 through 43). See Appeals Panel Decision (APD) 110741, decided July 25, 2011.

Dr. F is the designated doctor appointed by the Division for purposes of MMI and IR. Dr. F examined the claimant on September 7, 2021, and in a Report of Medical Evaluation (DWC-69) certified that the claimant reached MMI on June 7, 2021, and assigned a 15% IR. Using the AMA Guides, Dr. F placed the claimant in Cervicothoracic Diagnosis-Related Estimate (DRE) Category II: Minor Impairment for the claimant's cervical sprain and cervical strain and assigned a 5% IR. Dr. F placed the claimant in Lumbosacral DRE Category I: Complaints or Symptoms for the claimant's lumbar sprain and lumbar strain and assigned a 0% IR.

For the claimant's right hip, Dr. F assessed impairment for loss of ROM using Table 40 on page 3/78 of the AMA Guides. In his narrative report, Dr. F provided the following ROM measurements for the claimant's right hip: flexion 40°; extension 15°; abduction 40°; adduction 20°; internal rotation 30°; and external rotation 10°. Dr. F correctly assessed 0% impairment for the claimant's ROM measurements for abduction, adduction, and internal rotation. Using Table 40, Dr. F correctly assessed 8% impairment for loss of motion of flexion. However, Dr. F assessed 2% impairment for the claimant's loss of motion of external rotation. Table 40 of the AMA Guides provides that 10° for ROM of external rotation results in 4% impairment. Further, Dr. F did not

provide any impairment for claimant's loss of ROM for extension although the AMA Guides provide that 15° of extension for hip motion results in 2% impairment. In his narrative, Dr. F states that "[the claimant] did not exhibit right hip flexion contracture." We note that Table 40 on page 3/78 of the AMA Guides describes the ROM measurements for extension as degrees of flexion contracture. The measurements for extension for the claimant's ROM for his right hip provided in the narrative from Dr. F are conflicting. Accordingly, we reverse the ALJ's determination that the claimant's IR is 15%.

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 APD 121194, decided September 6, 2012; APD 041413, decided July 30, 2004; APD 100111, decided March 22, 2010; and APD 101949, decided February 22, 2011. It is not clear from his narrative report whether Dr. F intended to assess impairment for the claimant's loss of ROM for extension because of the conflicting comments regarding ROM for extension of the claimant's right hip in his narrative. Consequently, this case is not a case where the IR can be mathematically corrected.

There is no other certification in evidence with an MMI date of June 7, 2021. Accordingly, 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 claimant reached MMI on June 7, 2021.

We reverse the ALJ's determination that the claimant's IR is 15% and remand the issue of IR to the ALJ for further action consistent with this decision.

REMAND INSTRUCTIONS

Dr. F is the designated doctor in this case. On remand, the ALJ is to determine whether Dr. F is still qualified and available to be the designated doctor.

The ALJ is to request that the designated doctor rate the entire compensable injury based on the claimant's condition as of the date of MMI, June 7, 2021. The ALJ is to advise the designated doctor that according to the AMA Guides 10° of loss of motion of hip external rotation results in 4% impairment. The ALJ is to request that the

designated doctor clarify whether he intended to assign impairment for the claimant's loss of ROM of extension. We note that, under Section 3.2, The Lower Extremity, at p. 3/75 of the AMA Guides, impairments in the same lower extremity part are to be combined rather than added. See APD 211091-s, decided September 10, 2021.

The parties are to be provided with the correspondence to the designated doctor, the designated doctor's response, and are to be allowed an opportunity to respond. The ALJ is then to make a determination on the IR 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 **ZNAT INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
1999 BRYAN STREET, SUITE 900
DALLAS, TEXAS 75201-3136.**

Margaret L. Turner
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Carisa Space-Beam
Appeals Judge