

APPEAL NO. 220154  
FILED MARCH 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 was held on January 4, 2022, 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 appellant (claimant) reached maximum medical improvement (MMI) on July 22, 2021; and (2) the claimant's impairment rating (IR) is two percent. The claimant appeals the ALJ's determinations of MMI and IR. The respondent (carrier) responded, urging affirmance of the issues of MMI and IR.

DECISION

Reversed and remanded.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury), in the form of at least a right wrist sprain/strain, right shoulder sprain/strain, lumbar strain, and right thigh contusion, and (Dr. F) was selected by the Texas Department of Insurance, Division of Workers' Compensation (Division) as the designated doctor to determine MMI and IR. The claimant testified that she was injured on (date of injury), while working for the employer when she slipped on a mop head and fell backwards onto her buttocks.

**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.

Dr. F examined the claimant on July 22, 2021, and certified in his narrative report the claimant reached MMI on that same date, with a two percent 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). In his narrative report, Dr. F stated he chose July 22, 2021, the date of his exam, as the MMI date because, "[a]lthough the [claimant] has not (sic) any formal therapy as a result of her desire not to seek any medical intervention, it is doubtful that she will benefit from any treatment intervention at this point in time." However, the accompanying Report of Medical Evaluation (DWC-69) certifies that the claimant reached MMI on July 22, 2021, rather than July 22, 2021.

Therefore, there is an internal inconsistency between the MMI date Dr. F certified on the DWC-69 and the MMI date Dr. F certified in the accompanying narrative report. Because the narrative report and DWC-69 list different dates regarding when the claimant reached MMI, we do not consider that internal inconsistency to be a clerical error that can be corrected. See Appeals Panel Decision (APD) 220068, decided March 3, 2022. Accordingly, the ALJ's determination that the claimant reached MMI on July 22, 2021, is reversed.

With regard to the IR, Rule 130.1(c)(3) provides that an assignment of IR shall be based on the claimant's condition as of the MMI date. Given that we have reversed the ALJ's MMI determination, we reverse the ALJ's determination that the claimant's IR is two percent.

(Dr. H), a doctor selected by the treating doctor to act in his place, examined the claimant on December 17, 2021, and certified that the claimant had not reached MMI. As the ALJ noted in his discussion of the evidence, Dr. H considered an elbow sprain/strain and the potential, undiagnosed conditions of lumbar disc herniation with radiculopathy, right carpal tunnel syndrome, and right rotator cuff tear. The ALJ stated that Dr. H's opinion was not sufficient to overcome the presumption applied to the designated doctor's certification and found that the preponderance of the other medical evidence is not contrary to the determination of Dr. F. As Dr. H's certification considered non-compensable conditions, it cannot be adopted.

Since there is no certification of MMI and IR in evidence that can be adopted, we remand the issues of MMI and 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. If Dr. F is no longer qualified or is no longer available to serve as the designated doctor, then another designated doctor is to be appointed to determine the claimant's MMI and IR for the (date of injury), compensable injury.

If Dr. F is still qualified and available to serve as the designated doctor, the ALJ is to advise Dr. F that his July 31, 2021, DWC-69 and accompanying narrative report have an internal inconsistency regarding the date of MMI.

The ALJ is to advise the appointed designated doctor that the compensable injury of (date of injury), extends to a right wrist sprain/strain, right shoulder sprain/strain, lumbar strain, and right thigh contusion. The ALJ is to request that the designated doctor give an opinion on the claimant's date of MMI and rate the entire compensable injury in accordance with the AMA Guides considering the medical record and the certifying examination.

The parties are to be provided with the designated doctor's new MMI/IR certification and are to be allowed an opportunity to respond. The ALJ is then to make a determination on MMI and IR that is consistent with the evidence and 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 **AIU INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
211 E. 7TH STREET, SUITE 620  
AUSTIN, TEXAS 78701.**

---

Cristina Beceiro  
Appeals Judge

CONCUR:

---

Carisa Space-Beam  
Appeals Judge

---

Margaret L. Turner  
Appeals Judge