

APPEAL NO. 220260
FILED APRIL 6, 2022

This appeal after remand arises pursuant to the Texas Workers' Compensation Act, Tex. Lab. Code Ann. § 401.001 *et seq.* (1989 Act). The previous contested case hearing (CCH) resulting in Appeals Panel Decision (APD) 211411, decided November 5, 2021, was remanded on the issue of impairment rating (IR). No further CCH was held on remand, with the record closing on January 13, 2022, in (city), Texas, with (administrative law judge) presiding as the administrative law judge (ALJ). The ALJ resolved the disputed issue by deciding the appellant's (claimant) impairment rating (IR) is 9%.

The claimant appealed, disputing the ALJ's determination of IR. The respondent (carrier) responded, urging affirmance of the disputed IR determination.

DECISION

Reversed and rendered.

At the May 3, 2021, CCH setting, only ALJ's exhibit 1 was admitted into evidence. The parties agreed that a letter of clarification needed to be sent to the designated doctor along with additional medical records that had not been previously sent to the designated doctor. No testimony was taken, and the parties agreed to reset the CCH. The claimant did not appear at the July 6, 2021, setting of the CCH. A 10-day letter was sent to provide an opportunity for the claimant to explain why he did not attend the July 6, 2021, setting. No response was received from the claimant. The parties agreed that the claimant sustained a compensable injury in the form of a right forearm laceration, right flexor carpi ulnaris laceration, right flexor digitorum profundus tendon laceration at the ring finger, right flexor digitorum profundus tendon laceration at the little finger, right median nerve injury, neuroma mass, right flexor tendon injury at the forearm, right ring finger flexor digitorum superficialis tendon injury, and right little finger flexor digitorum superficialis tendon injury. The medical records reflect that the claimant was injured on (date of injury), when a large glass object that he was carrying overhead shattered. In APD 211411, *supra*, the Appeals Panel affirmed the ALJ's determination that the claimant reached MMI on October 6, 2020, and the issue of IR was remanded to the ALJ.

No CCH was held on remand. In his discussion of the evidence, the ALJ notes that the prior designated doctor appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division), (Dr. C), voluntarily removed himself from the approved doctor's list. (Dr. R) was appointed by the Division as a successor designated doctor for the issue of IR.

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.

Dr. R examined the claimant on December 7, 2021, and certified that the claimant reached MMI on October 6, 2020, with a 9% 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 her narrative report dated December 7, 2021, Dr. R assessed 0% impairment for the claimant's forearm skin lacerations. Dr. R assessed 0% impairment for the claimant's nerve injury. The rest of the claimant's impairment was based on loss of range of motion (ROM) of the claimant's right wrist and fingers. Dr. R correctly assessed 2% upper extremity (UE) impairment for the claimant's loss of extension of his right wrist. Dr. R attached Figure 1 detailing the ROM measurements of the claimant's fingers of his right hand. Figure 1 reflects that Dr. R correctly assessed impairment based on the measurements provided for the claimant's right index, middle, and ring fingers.

Dr. R's attached Figure 1 to her narrative report noted the following ROM for the claimant's right little finger: 50° distal interphalangeal joint (DIP) flexion, -10° DIP extension; 67° proximal interphalangeal joint (PIP) flexion, 0° PIP extension; and 80° metacarpophalangeal joint (MP) flexion, +20° MP extension.

On page 3/31 of the AMA Guides, the directions for DIP joint flexion and extension state that measurements must be rounded to the nearest 10°. Dr. R assessed a 17% DIP joint impairment using Figure 19, page 3/32. Dr. R measured 50° of flexion and assigned a 10% impairment and measured -10° of extension and assigned a 7% impairment. DIP joint flexion and extension impairments are added which total to a 17% impairment. However, Figure 19 provides that -10° of extension would result in 2% impairment rather than the 7% assigned by Dr. R. DIP joint flexion and extension impairments would then be added for a total of 12% impairment rather than the 17% impairment assessed by Dr. R. We note that Figure 19 does not provide 7% impairment for any measurement of extension.

On page 3/33 of the AMA Guides, the directions for PIP joint flexion and extension state that measurements must be rounded to the nearest 10°. Dr. R assessed an 18% PIP joint impairment by using Figure 21, on page 3/33. Dr. R

measured 67° of flexion, which she rounded up to 70°, and assigned an 18% impairment, and measured 0° of extension and assigned a 0% impairment. PIP joint flexion and extension impairments are added which total to an 18% impairment.

On page 3/34 of the AMA Guides, the directions for MP joint flexion and extension state that measurements must be rounded to the nearest 10°. Dr. R assessed a 6% MP joint impairment using Figure 23, on page 3/34. Dr. R measured 80° of flexion and assigned a 6% impairment and measured +20° of extension and assigned a 0% impairment. MP joint flexion and extension impairments are added which total to a 6% impairment.

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.

The DIP, PIP and MP joint impairments are combined using the Combined Values Chart on page 322 of the AMA Guides. Dr. R states that she assessed a 36% impairment for the right little finger by combining the values for the DIP, PIP and MP joint impairments. However, because Dr. R incorrectly assessed 7% impairment for DIP extension rather than 2% she combined 17%, 18%, and 6% to arrive at the hand impairment assessed for the right little finger. The correct figures based on the loss of ROM for the right little finger are 12%, 18%, and 6%. When using the correct impairment assessed according to the AMA Guides for the loss of ROM reported by Dr. R of the claimant's right little finger, the digit impairment is 32% rather than 36% assessed by Dr. R. Using Table 1 on page 3/18 of the AMA Guides, 32% for the digit impairment of the right little finger converts to 3% hand impairment rather than the 4% assessed by Dr. R.

Using Table 2 on page 3/19 of the AMA Guides, Dr. R converted the 14% right hand impairment to 13% right UE impairment which she combined with 2% UE impairment assessed for the right wrist. Using Table 3, Dr. R converted the 15% right UE impairment to 9% whole person impairment (WPI). However, as previously noted, because of her error in assessing impairment for DIP extension of the right little finger, Dr. R should have used 13% hand impairment instead of 14% hand impairment, which using Table 2 converts to 12% UE impairment. 12% UE impairment combined with 2% UE impairment for the right wrist results in 14% UE impairment, which using Table 3 on

page 3/20 of the AMA Guides converts to 8% WPI rather than the 9% WPI assessed by Dr. R.

Under the facts of this case, we consider Dr. R's 9% IR to be a mathematical error that can be corrected without involving the exercise of medical judgment in correcting that error.

The ALJ found that the preponderance of the other medical evidence is not contrary to Dr. R's assigned IR, and after a mathematical correction, that finding is supported by the evidence. Accordingly, we reverse the ALJ's determination that the claimant's IR is 9% and we render a new decision that the claimant's IR is 8%, as mathematically corrected.

The true corporate name of the insurance carrier is **NEW HAMPSHIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701-3218.**

Margaret L. Turner
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Carisa Space-Beam
Appeals Judge