

APPEAL NO. 220307
FILED APRIL 20, 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 (CCH) was held on January 11, 2022, in (city), Texas¹, with (administrative law judge) presiding as the administrative law judge (ALJ). The ALJ resolved the disputed issues by deciding that: (1) the respondent (claimant) has not reached maximum medical improvement (MMI); (2) the claimant's impairment rating (IR) cannot be assigned at this time; and (3) the claimant had disability resulting from the compensable injury from (date of injury), through the date of the CCH. The appellant (carrier) appealed the ALJ's determinations. The carrier asserts on appeal that the ALJ's discussion contained an error regarding the certification issued by (Dr. J), the designated doctor appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division). The appeal file does not contain a response from the claimant.

DECISION

Affirmed.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury), that extends to bilateral knee contusions and bilateral ankle sprains. The claimant was injured on (date of injury), while welding a pipe on a roof. The claimant testified that he slipped and a security harness he was wearing did not hold and he fell 15 feet to the ground.

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).

The ALJ determined the claimant has not reached MMI and the claimant's IR cannot be assigned at this time based on the certification from (Dr. N), a doctor selected by the treating doctor to act in the treating doctor's place. The ALJ also determined the claimant had disability resulting from the compensable injury from (date of injury), through the date of the CCH. The ALJ's determinations are supported by sufficient

¹ We note the CCH was held in (city), Texas, rather than (city), Texas, due to facility issues.

evidence and are affirmed. However, a decision is being written to clarify statements made by the ALJ in her discussion.

Dr. J was appointed by the Division to determine MMI and IR. Dr. J examined the claimant on April 23, 2021. The ALJ stated that Dr. J certified “that [the claimant] had not reached [MMI] as of the date of his evaluation.” The ALJ also stated in the same paragraph that Dr. J “placed [the claimant] at [MMI] and assigned a [zero percent IR].” The evidence reflects Dr. J did examine the claimant on April 23, 2021, and placed the claimant at MMI on that same date. There is no certification in evidence from Dr. J certifying the claimant had not reached MMI. The ALJ specifically found that the preponderance of the other medical evidence is contrary to Dr. J’s certification that the claimant reached MMI on April 23, 2021, with an IR of zero percent, and determined the claimant had not reached MMI and an IR cannot be assigned at this time based on the certification from Dr. N. Under the circumstances of this case, we view the ALJ’s statement in her discussion that Dr. J certified the claimant had not reached MMI as of the date of his evaluation as a typographical error that does not affect the outcome of the case. Accordingly, we affirm the ALJ’s determinations that the claimant has not reached MMI, the claimant’s IR cannot be assigned at this time, and the claimant had disability resulting from the compensable injury from (date of injury), through the date of the CCH.

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

**RICHARD J. GERGASKO
2200 ALDRICH STREET
AUSTIN, TEXAS 78723.**

Carisa Space-Beam
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Margaret L. Turner
Appeals Judge