

APPEAL NO. 220360
FILED MAY 4, 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 26, 2022, in (city) Texas, with (administrative law judge) presiding as the administrative law judge (ALJ). The ALJ resolved the disputed issues by determining that: (1) the compensable injury of (date of injury), does not extend to complex regional pain syndrome; (2) the date of maximum medical improvement (MMI) is December 14, 2020; and (3) the respondent/cross-appellant's (claimant) impairment rating (IR) is 15%. The appellant/cross-respondent (self-insured) appealed the ALJ's MMI and IR determinations. The appeal does not contain a response from the claimant to the self-insured's appeal. The claimant cross-appealed the ALJ's extent-of-injury determination. The self-insured responded, urging affirmance of the appealed determination.

DECISION

Affirmed in part and reversed and remanded in part.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury), which extends to at least a dog bite wound with nerve damage to the sensory nerves on the dorsum of the right hand and right hand laceration with puncture wound; the date of statutory MMI is January 18, 2021; the Texas Department of Insurance, Division of Workers' Compensation (Division) appointed (Dr. H) as the initial designated doctor to determine MMI, IR, and extent of injury; and the Division appointed (Dr. W) as the successor designated doctor to determine the issues of MMI, IR, and extent of injury. The claimant was injured on (date of injury), when he was bitten on his right hand by a Pit Bull while attempting to read a water meter.

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

The ALJ's determination that the compensable injury of (date of injury), does not extend to complex regional pain syndrome is supported by sufficient evidence and is affirmed.

MMI

The ALJ's determination that the date of MMI is December 14, 2020, 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.

The ALJ determined the claimant's IR is 15% as certified by Dr. H, the initial designated doctor appointed by the Division to determine MMI and IR. Dr. H examined the claimant on December 14, 2020, and certified that the claimant reached MMI on December 14, 2020, considering the compensable injury of a dog bite wound with nerve damage to the sensory nerves on the dorsum of the right hand and right hand laceration with puncture wound. 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), Dr. H assigned a 15% IR. Dr. H explained in his narrative report that the 15% IR is comprised of the following: 5% upper extremity (UE) impairment for loss of range of motion (ROM) of the right hand, 3% UE impairment for loss of ROM of the right wrist, 4% UE impairment for sensory loss, and 10% whole person impairment (WPI) for skin disorders. Dr. H's 5% UE impairment for the right hand, 4% UE impairment for sensory loss, and 10% WPI for skin disorders were all made in accordance with the AMA Guides. However, Dr. H's 3% UE impairment for loss of ROM of the right wrist was not.

Dr. H's narrative report listed the following regarding the claimant's right wrist:

Range of Motion:	
Wrist:	
Flexion	58°
Extension	47°

Supination	54°
Pronation	84°
Ulnar deviation	42°
Radial deviation	38°

Using Figure 26 on page 3/36 of the AMA Guides and Figure 29 on page 3/38 of the AMA Guides, Dr. H assigned the following UE impairments for the claimant's right wrist based on loss of ROM: 0% impairment for 58° of flexion, 2% impairment for 47° of extension, 0% impairment for 42° of ulnar deviation, and 0% impairment for 38° of radial deviation. Dr. H also assigned 1% impairment for 54° of supination and 0% impairment for 84° of pronation using Figure 35 [UE] Impairments Due to Lack of Pronation and Supination on page 3/41. Page 3/38 of the AMA Guides provides the following:

Determining Impairments Due to Abnormal Motion of the Wrist Joint

1. Determine the impairments of the [UE] contributed by abnormal wrist motions relating to flexion and extension and to radial and ulnar deviation.

Impairments of pronation and supination are ascribed to the elbow, because the major muscles for this function are inserted about the elbow.

2. Because the relative value of each wrist functional unit has been taken into consideration in the impairment charts, impairments of flexion and extension and of radial and ulnar deviation are *added* (emphasis in original) to determine the impairment of the [UE].
3. Use Table 3 [on page 3/20] to relate impairment of the [UE] to impairment of the whole person.

Dr. H included UE impairments for ROM of supination and pronation under Figure 35 on page 3/41; however, as discussed above, impairments for supination and pronation are for the elbow, not the wrist. Dr. H did not identify or discuss elbow ROM measurements in his report. It is unclear why Dr. H assigned UE impairments for supination and pronation under Figure 35.

Dr. H combined 5% UE impairment for ROM deficits of the right hand with 3% UE impairment for ROM deficits of the right wrist, which included impairment for supination as explained above, with 4% UE impairment for sensory loss for a total UE impairment of 12%. Using Table 3 on page 3/20, Dr. H converted 12% UE impairment to 5% WPI. However, we note Table 3 provides that 12% UE impairment converts to 7% WPI. Dr. H then combined 5% WPI with 10% WPI based on skin disorders for a total 15% IR. Dr. H's 15% IR does not comply with the AMA Guides; therefore, 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 Appeals Panel Decision (APD) 171766, decided September 7, 2017; APD 152464, decided February 17, 2016; 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. However, in the case on appeal, Dr. H assigned impairment for the claimant's right wrist using ROM measurements taken for supination and pronation, which are not appropriate ROM measurements for the wrist. As such, we do not believe a mathematical correction is appropriate in this case.

There is no other certification in evidence certifying an MMI date of December 14, 2020. 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 compensable injury of (date of injury), does not extend to complex regional pain syndrome.

We affirm the ALJ's determination that the date of MMI is December 14, 2020.

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

REMAND INSTRUCTIONS

Dr. W is the most recently appointed designated doctor in this case. On remand the ALJ is to determine whether Dr. W is still qualified and available to be the designated doctor. If Dr. W is no longer qualified or available, another designated doctor is to be appointed to determine the claimant's IR.

The ALJ is to inform the designated doctor that the compensable injury in this case is a dog bite wound with nerve damage to the sensory nerves on the dorsum of the right hand and right hand laceration with puncture wound, and that the date of MMI is December 14, 2020. The ALJ is to request the designated doctor to rate the entire compensable injury and assign an IR in accordance with Rule 130.1(c)(3) based on the claimant's condition as of the MMI date of December 14, 2020, considering the medical records, the certifying examination, and rating criteria in the AMA Guides.

The parties are to be provided with the ALJ's letter of clarification to Dr. W or Presiding Officer's Directive to Order Designated Doctor Examination if another designated doctor is assigned, as well as the designated doctor's report. The ALJ is to give the parties an opportunity to respond prior to closing the record and issuing a 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 **(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).

Carisa Space-Beam
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Margaret L. Turner
Appeals Judge