

APPEAL NO. 220411  
FILED APRIL 26, 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 February 1, 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 compensable injury of (date of injury), extends to a lumbar sprain/strain, right knee sprain/strain, right lower extremity/hip pain, and thoracic radiculopathy; (2) the appellant (claimant) reached maximum medical improvement (MMI) on December 1, 2020; and (3) the claimant's impairment rating (IR) is 10%. The claimant appealed the ALJ's determinations of MMI and IR. The respondent (carrier) responded to the claimant's appeal, urging affirmance of the ALJ's determinations of MMI and IR.

The ALJ's determination that the compensable injury of (date of injury), extends to a lumbar sprain/strain, right knee sprain/strain, right lower extremity/hip pain, and thoracic radiculopathy was not appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated, in part, that: (1) on (date of injury), the claimant sustained a compensable injury which extends to a lumbar sprain/strain, right knee sprain/strain, right lower extremity/hip pain, and thoracic radiculopathy; and (2) the Texas Department of Insurance, Division of Workers' Compensation (Division) appointed (Dr. L) as designated doctor to determine the issues of MMI and IR. The evidence reflected that the claimant, while working as a pre-loader of the United Parcel Service on (date of injury), was injured when she stepped out of her truck and felt a pop and pain in her low back that radiated into her right leg.

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).

MMI

The ALJ's determination that the claimant reached MMI on December 1, 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 that the claimant reached MMI on December 1, 2020, with a 10% IR in accordance with the certification of Dr. L, the designated doctor. Dr. L examined the claimant on December 1, 2020, and assigned the 10% IR based on the compensable conditions of a lumbar sprain/strain, right knee sprain/strain, right lower extremity/hip pain, and thoracic radiculopathy 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. L assessed a 0% impairment for the claimant's lumbar spine and placed the claimant in Diagnosis-Related Estimate (DRE) Lumbosacral Category I of the AMA Guides. He assigned a 0% impairment for the claimant's thoracic spine and placed the claimant in DRE Thoracolumbar Category I of the AMA Guides. Dr. L then assigned 4% impairment based on range of motion (ROM) deficits in the claimant's right knee. Finally, Dr. L assigned 6% impairment based on ROM deficits in the claimant's right hip based on the following ROM measurements: flexion 95° (2% impairment); extension 18° (0% impairment); external rotation 25° (2% impairment); internal rotation 20° (2% impairment); abduction 22° (0% impairment); and adduction 18° (0% impairment). Dr. L then combined these for a 6% impairment for the right hip. Dr. L then combined the 6% right hip impairment with the 4% right knee impairment for a 10% whole person IR.

However, there were two mistakes in Dr. L's right hip calculation. Dr. L stated that 18° of extension resulted in 0% impairment, but Table 40 on page 3/78 of the AMA Guides indicates that 18° of extension results in 2% impairment. Additionally, Dr. L stated that 22° of abduction resulted in 0% impairment, but Table 40 on page 3/78 of the AMA Guides indicates that 22° of abduction results in 2% impairment. Therefore, the total impairment for the claimant's right hip is 10%, not 6% as indicated by Dr. L.

Combining 10% impairment for the right hip and 4% impairment for the right knee results in a 14% IR and not 10% as determined by Dr. L.

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 172488, decided December 18, 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.

In this case, Dr. L mistakenly indicated that 18° of extension resulted in 0% impairment, instead of 2% impairment and 22° of abduction resulted in 0% impairment, instead of 2% as shown in Table 40 on page 3/8 of the AMA Guides. Combining 10% impairment for the right hip and 4% impairment for the right knee results in a 14% IR and not 10% as determined by Dr. L. The ALJ found that the preponderance of the other medical evidence is not contrary to the certification of IR by Dr. L. After a mathematical correction, that finding is supported by the evidence. Accordingly, we reverse the ALJ's determination that the claimant's IR is 10%, and we render a new decision that the claimant's IR is 14% as mathematically corrected.

### **SUMMARY**

We affirm the ALJ's determination that the claimant reached MMI on December 1, 2020.

We reverse the ALJ's determination that the claimant's IR is 10%, and we render a new decision that the claimant's IR is 14% as mathematically corrected.

The true corporate name of the insurance carrier is **LM INSURANCE CORPORATION** 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.**

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Cristina Beceiro  
Appeals Judge

CONCUR:

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Carisa Space-Beam  
Appeals Judge

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Margaret L. Turner  
Appeals Judge