

APPEAL NO. 220497
FILED MAY 18, 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 March 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), does not extend to radiculopathy of C7 or right biceps tendinosis; and (2) the appellant's (claimant) impairment rating (IR) is 8%. The claimant appealed the ALJ's determinations. The respondent (carrier) responded, urging affirmance of the ALJ's determinations.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated, in part, that the carrier has accepted liability for C6-7 disc herniation, right shoulder impingement, right shoulder strain, right distal biceps tendon rupture, left shoulder impingement, left shoulder strain, left pectoralis major tendon rupture, and C. difficile colitis, and that the claimant reached maximum medical improvement (MMI) on April 6, 2020. It is undisputed the claimant sustained a compensable injury on (date of injury), when he fell while trying to climb down into a screw lift machine.

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 radiculopathy of C7 or right biceps tendinosis 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 Texas Department of Insurance, Division of Workers'

Compensation (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. A) was the designated doctor appointed by the Division to determine MMI and IR. Dr. A examined the claimant on October 15, 2020, and issued two Reports of Medical Evaluation (DWC-69s), both certifying an April 6, 2020, date of MMI and assigning a 22% IR. The ALJ correctly noted in her discussion that Dr. A included conditions that have been determined not to be compensable. Specifically, Dr. A's certifications consider radiculopathy of C7 and right biceps tendinosis. The ALJ found that Dr. A's certification is contrary to the preponderance of the other medical evidence because it is not based on the compensable injury. The ALJ's finding is supported by sufficient evidence and is affirmed.

The ALJ determined the claimant's IR is 8% as certified by (Dr. D), the post-designated doctor required medical examination doctor. Dr. D examined the claimant on February 26, 2021, and issued two DWC-69s on March 7, 2021. Both of Dr. D's certifications certify an MMI date of April 6, 2020, with an 8% IR. Dr. D's narrative report reflects that one of Dr. D's certifications does not consider C. difficile colitis, which is a condition that is part of the compensable injury. However, the other certification does consider the entire compensable injury, and it is this certification that the ALJ adopted.

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. D placed the claimant in Diagnosis-Related Estimate (DRE) Category II: Minor Impairment for 5% impairment for the claimant's cervical spine. Dr. D also assigned 2% whole person impairment (WPI) for the claimant's right upper extremity (UE) and 1% WPI for the claimant's left UE based on range of motion (ROM) deficits. Dr. D combined these impairments for a WPI of 8%. Although Dr. D's 2% WPI for the claimant's right UE was made in accordance with the AMA Guides, his 1% WPI for the claimant's left UE was not.

Dr. D's attached worksheet for the claimant's left shoulder reflects he correctly assigned 1% impairment for 160° of flexion and 1% impairment for 150° of abduction, as well as 2% impairment for 50° of internal rotation as provided in Figures 38, 41, and

44 on pages 3/43, 3/44, and 3/45 of the AMA Guides, respectively. Dr. D's worksheet also reflects that he added these impairments for 4% UE impairment, and then correctly converted the 4% UE impairment to 2% WPI as provided by Table 3 on page 3/20. However, Dr. D incorrectly stated in his narrative report that the claimant's left shoulder resulted in 1% WPI, rather than 2% WPI as shown on his worksheet.

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.

Combining 2% WPI for loss of ROM of the claimant's right UE, with 2% WPI for loss of ROM of the claimant's left UE results in 4% WPI. Combining 5% WPI for the claimant's cervical spine and 4% WPI for the claimant's right and left UE results in a 9% IR, not an 8% IR as certified by Dr. D. Accordingly, we reverse the ALJ's determination that the claimant's IR is 8%, and we render a new decision that the claimant's IR is 9%, as mathematically corrected.

SUMMARY

We affirm the ALJ's determination that the compensable injury of (date of injury), does not extend to radiculopathy of C7 or right biceps tendinosis.

We reverse the ALJ's determination that the claimant's IR is 8%, and we render a new decision that the claimant's IR is 9%, as mathematically corrected.

The true corporate name of the insurance carrier is **STARR INDEMNITY AND LIABILITY COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEMS
1999 BRYAN STREET, SUITE 900
DALLAS, TEXAS 75201-3136.**

Carisa Space-Beam
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Margaret L. Turner
Appeals Judge