

APPEAL NO. 220498
FILED MAY 31, 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 17, 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 an unspecified sprain of right shoulder joint; unspecified sprain of right elbow; lesion of radial nerve, right upper limb; lesion of ulnar nerve, right upper limb; unspecified disorder of synovium or tendon, right forearm; or radial styloid tenosynovitis de Quervain, right wrist; and (2) the appellant's (claimant) impairment rating (IR) is 9%. The claimant appealed the ALJ's determinations of extent of injury and IR. The respondent (carrier) responded to the claimant's appeal, urging affirmance of the ALJ's determinations.

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; (2) the carrier has accepted a compensable injury in the form of a right hand puncture with foreign body; right hand extensor tendon injury; right radial sensory nerve injury; laceration of extensor tendon of right forearm; and instability of right wrist joint; (3) the Texas Department of Insurance, Division of Workers' Compensation (Division) appointed (Dr. Y) as designated doctor to determine the issues of extent of injury, maximum medical improvement (MMI), and IR; and (4) the claimant reached MMI on July 15, 2021, as certified by Dr. Y and treating doctor referral, (Dr. K). The claimant testified that he was injured on (date of injury), while working as a diesel mechanic. A co-worker was swinging a sledgehammer when a piece of it broke off and punctured the claimant's right hand.

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 an unspecified sprain of right shoulder joint; unspecified sprain of right elbow; lesion of radial nerve, right upper limb; lesion of ulnar nerve, right upper limb; unspecified disorder of synovium or tendon, right forearm; or radial styloid tenosynovitis de Quervain, right wrist 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.

As stated above, the parties stipulated that the claimant reached MMI on July 15, 2021. The ALJ determined that the claimant's IR is 9% in accordance with the certification of Dr. Y, the designated doctor. Dr. Y examined the claimant on July 28, 2021, and assigned the 9% IR based on the compensable conditions of a right hand puncture with foreign body; right hand extensor tendon injury; right radial sensory nerve injury; laceration of extensor tendon of right forearm; and instability of right wrist joint. 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. Y assessed a 0% impairment for right hand puncture with foreign body. He assigned an 11% upper extremity (UE) impairment for the claimant's right hand extensor tendon injury and instability of the right wrist joint based on deficits in the claimant's right wrist range of motion (ROM). Dr. Y then assigned 3% UE impairment for the right radial sensory nerve injury. Finally, Dr. Y assigned 1% UE impairment for the laceration of the extensor tendon of the right forearm based on ROM deficits in the claimant's right elbow based on the following ROM measurements: flexion 130°; extension 0°; pronation 60°; and supination 90°. Dr. Y then combined the 11% UE impairment, 3% UE impairment, and 1% UE impairment for a total 15% UE impairment. Dr. Y then converted the 15% UE impairment to 9% whole person impairment (WPI).

However, there was a mistake in Dr. Y's right elbow calculation. According to Figures 32 and 35 on pages 3/40 and 3/41, respectively, of the AMA Guides, flexion of 130° results in 1% UE impairment; extension of 0° results in 0% UE impairment;

pronation of 60° results in 1% UE impairment; and supination of 90° results in 0% UE impairment. Adding these figures results in 2% UE impairment for the right elbow, not 1% UE impairment as indicated by Dr. Y. Combining 11% UE impairment, 3% UE impairment, and 2% UE impairment results in a total 16% UE impairment. Using Table 3 on page 3/20 of the AMA Guides, 16% UE impairment converts to a WPI of 10%, not 9% as certified by Dr. Y.

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.

The ALJ found that the preponderance of the other medical evidence is not contrary to the certification of IR by Dr. Y. 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 10% as mathematically corrected.

SUMMARY

We affirm the ALJ's determination that the compensable injury of (date of injury), does not extend to an unspecified sprain of right shoulder joint; unspecified sprain of right elbow; lesion of radial nerve, right upper limb; lesion of ulnar nerve, right upper limb; unspecified disorder of synovium or tendon, right forearm; or radial styloid tenosynovitis de Quervain, right wrist.

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 10% as mathematically corrected.

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

**CORPORATION SERVICE CO.
d/b/a CSC-LAWYERS INCORPORATING SERVICE CO.
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701-3218.**

Cristina Beceiro
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge