

APPEAL NO. 220528  
FILED MAY 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 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 appellant (claimant) reached maximum medical improvement (MMI) on May 28, 2021; and (2) the claimant's impairment rating (IR) is 14%. The claimant appealed, disputing the ALJ's IR determination. The respondent (carrier) responded, urging affirmance of the ALJ's IR determination. The ALJ's determination that the claimant reached MMI on May 28, 2021, was not appealed and has become final pursuant to Section 410.169.

DECISION

Reversed and rendered.

It was undisputed that the claimant sustained a compensable injury on (date of injury). The parties stipulated, in part, that the compensable injury consists of a neck strain, lumbar strain, L5-S1 herniated disc, bilateral hip strain, bilateral shoulder strain, left 5th digit sprain and fracture, post-traumatic stress disorder (PTSD), labral tearing of bilateral hips, and straight neck syndrome; and the claimant reached MMI on the statutory date of May 28, 2021. The claimant was injured on (date of injury), when he was thrown around in a derailling railcar until he was able to jump off before the railcar crashed.

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.

The ALJ determined the claimant's IR is 14% as certified by (Dr. L), the designated doctor appointed to determine MMI and IR. Dr. L initially examined the claimant on August 14, 2020, and certified the claimant reached MMI on June 25, 2020,

with a 10% IR. Because this certification does not certify an MMI date of May 28, 2021, which has not been appealed and has become final, Dr. L's initial certification cannot be adopted.

Dr. L next examined the claimant on September 2, 2021, and certified the claimant reached MMI on May 28, 2021, with a 14% IR 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). It was this certification the ALJ adopted. Dr. L's narrative report shows she rated the entire compensable injury in this case, which is the following: neck strain, lumbar strain, L5-S1 herniated disc, bilateral hip strain, bilateral shoulder strain, left 5th digit sprain and fracture, PTSD, labral tearing of bilateral hips, and straight neck syndrome.

Using the AMA Guides, Dr. L placed the claimant in Diagnosis-Related Estimate (DRE) Cervicothoracic Category I: Complaints or Symptoms for 0% impairment for the claimant's cervical spine, and DRE Lumbosacral Category II: Minor Impairment for 5% impairment for the claimant's lumbar spine. Dr. L assigned 5% whole person impairment (WPI) under Table 3 Emotional or Behavioral Impairments on page 4/142 of the AMA Guides for PTSD. We note an addendum by Dr. L dated October 3, 2021, was attached to her certification stating that on September 22, 2021, Dr. L received a psychological report from September 17, 2021, after her evaluation of the claimant, and that although she reviewed the psychological report, she maintained her 5% impairment for the claimant's PTSD. Using range of motion (ROM) measurements of the claimant's right and left shoulders, Dr. L assigned 2% WPI.<sup>1</sup> Dr. L also assigned 0% impairment for the claimant's left 5th digit using ROM measurements. Dr. L's WPI for the claimant's cervical and lumbar spine, upper extremity (UE), and PTSD were all made in accordance with the AMA Guides. However, her WPI for the claimant's bilateral hips was not.

Using Table 40 Hip Motion Impairments on page 3/78 of the AMA Guides, for the claimant's right hip Dr. L assigned 0% impairment for 100° of flexion, 0% impairment for 0° of extension, 0% impairment for 30° of abduction, 0% impairment for 20° of adduction, 0% impairment for 30° of internal rotation, and 1% impairment for 30° of external rotation. For the claimant's left hip Dr. L assigned 0% impairment for 100° of

---

<sup>1</sup> In Dr. L's attached worksheet for the claimant's right shoulder, she mistakenly noted the total UE impairment was 3%. However, Dr. L correctly noted the regional impairment of the UE for the claimant's right shoulder was 2% and no further impairment was assessed. The total impairment assessed by Dr. L was based on the 2% UE impairment for the right shoulder. We view the 3% total UE impairment noted in Dr. L's worksheet for the right shoulder as a clerical error that does not affect the claimant's IR.

flexion, 0% impairment for 0° of extension, 0% impairment for 30° of abduction, 0% impairment for 20° of adduction, 0% impairment for 30° of internal rotation, and 1% impairment for 30° of external rotation. Dr. L assigned a 2% WPI for the claimant's bilateral hips. However, Table 40 on page 3/78 provides that 30° of external rotation of the hip results in 2% WPI, not 1% WPI as assigned by Dr. L. Therefore, 30° of external rotation for the claimant's right hip and 30° of external rotation for the claimant's left hip results in a 4% WPI, not a 2% WPI as assigned by Dr. L.

Dr. L combined 0% impairment for the cervical spine, 5% impairment for the lumbar spine, 2% impairment for the bilateral shoulders, 0% impairment for the left 5th digit, 5% impairment for PTSD, and 2% impairment for the bilateral hips for a total IR of 14%. However, combining these impairments with the correct 4% impairment for the bilateral hips results in a 16% WPI, not 14% as certified 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.

The ALJ found that Dr. L's 14% IR is not contrary to the preponderance of the other medical evidence. After a mathematical correction that finding is supported by the evidence. Accordingly, we reverse the ALJ's determination that the claimant's IR is 14% and render a new decision that the claimant's IR is 16% as mathematically corrected.

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, PRESIDENT  
2200 ALDRICH STREET  
AUSTIN, TEXAS 78723.**

---

Carisa Space-Beam  
Appeals Judge

CONCUR:

---

Cristina Beceiro  
Appeals Judge

---

Margaret L. Turner  
Appeals Judge