

APPEAL NO. 220608
FILED JUNE 8, 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 11, 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 rotator cuff tear of the left shoulder, but not a SLAP tear of the left shoulder; (2) the appellant (claimant) reached maximum medical improvement (MMI) on October 9, 2021; and (3) the claimant's impairment rating (IR) is 14%. The claimant appealed that portion of the ALJ's extent-of-injury determination that was adverse to him, as well as MMI and IR. The respondent (self-insured) responded to the claimant's appeal, urging affirmance of the ALJ's determinations.

The ALJ's determination that the compensable injury of (date of injury), extends to a rotator cuff tear of the left shoulder 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 in the form of at least the accepted conditions of displaced fractures of L2, L3, and L4 transverse processes, contusion of the low back with subcutaneous hematoma, lumbar sprain and strain, closed fractures of the left 10th and 11th ribs, and a left shoulder contusion; (2) the Texas Department of Insurance, Division of Workers' Compensation (Division) properly appointed (Dr. S) as designated doctor on the issues of extent of injury, MMI, and IR; and (3) the date of statutory MMI in this case is October 9, 2021. The claimant testified that he was injured on (date of injury), while working in maintenance and fell 12 feet to the ground from scaffolding, landing on floor joists.

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 a left shoulder SLAP tear is supported by sufficient evidence and is affirmed.

MMI

The ALJ's determination that the claimant reached MMI on October 9, 2021, 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 October 9, 2021, with a 14% IR in accordance with the certification of Dr. S, the designated doctor. Dr. S examined the claimant on November 17, 2021, and assigned the 14% IR based on the entire compensable injury. 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. S assessed a 5% impairment for the transverse fractures, low back contusion with hematoma, and the lumbar sprain and strain, placing the claimant in Diagnosis-Related Estimate (DRE) Lumbosacral Category II. He assigned a 0% impairment for the rib fractures. Dr. S then assigned 15% upper extremity (UE) impairment for the left shoulder injuries based on range-of-motion deficits. Dr. S converted the 15% UE impairment to a 9% whole person impairment (WPI). He then combined the 9% impairment for the left shoulder with the 5% impairment for the spine for a total WPI of 14%.

There was a mistake in Dr. S's left shoulder impairment calculation. Dr. S assigned impairment based on the following left shoulder measurements: flexion 100° (5%); extension 50° (0%); abduction 80° (5%); adduction 0° (0%); internal rotation 30° (4%); and external rotation 30° (1%). However, according to Figure 41 on page 3/44 of the AMA Guides, 0° of adduction in the shoulder results in 2% UE impairment, not 0%

as assessed by Dr. S. Adding the correct UE impairment for the left shoulder results in 17% UE impairment, not 15% UE impairment. 17% UE impairment converts to a 10% WPI in accordance with Table 3 on page 3/20 of the AMA Guides. Combining 10% WPI for the left shoulder and 5% WPI for the lumbar spine results in a total 15% WPI, instead of a 14% WPI as certified by Dr. S.

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 Dr. S. 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 we render a new decision that the claimant's IR is 15% as mathematically corrected.

SUMMARY

We affirm the ALJ's determination that the compensable injury of (date of injury), does not extend to a left shoulder SLAP tear.

We affirm the ALJ's determination that the claimant reached MMI on October 9, 2021.

We reverse the ALJ's determination that the claimant's IR is 14%, and we render a new decision that the claimant's IR is 15% as mathematically corrected.

The true corporate name of the insurance carrier is **(self-insured through Texas Association of Counties Risk Management Pool)** and the name and address of its registered agent for service of process is

(NAME)
EXECUTIVE DIRECTOR
(ADDRESS)
(CITY), TX (ZIP CODE).

Cristina Beceiro
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge