

APPEAL NO. 220639
FILED JUNE 9, 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 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 a left foot fracture or left ankle tendinitis; (2) the appellant (claimant) reached maximum medical improvement (MMI) on December 16, 2020; (3) the claimant's impairment rating (IR) is two percent; and (4) the first certification of MMI and assigned IR from (Dr. P) on February 4, 2021, did not become final under Section 408.123 and 28 Tex. Admin. Code § 130.12 (Rule 130.12). The claimant appealed the ALJ's determinations of extent of injury, MMI, and IR. The respondent (carrier) responded to the claimant's appeal, urging affirmance of the ALJ's determinations.

The ALJ's determination that the first certification of MMI and assigned IR from Dr. P on February 4, 2021, did not become final under Section 408.123 and Rule 130.12 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; (2) the compensable injury of (date of injury), extends to a left foot sprain and left ankle sprain; and (3) the Texas Department of Insurance, Division of Workers' Compensation (Division) properly appointed Dr. P as designated doctor to determine MMI, IR, and extent of injury. The claimant testified that she was injured on (date of injury), while working as a patient care assistant and twisted her foot while walking into a building from a parking garage. We note that in his decision, the ALJ stated that the carrier was represented by (attorney) at the March 17, 2022, CCH. However, the record indicates that (attorney) appeared to represent the carrier at the March 17, 2022, CCH. We also note that the ALJ mistakenly stated in Stipulation 1.C. that the employer is self-insured with the carrier; however, the employer is not self-insured.

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 foot fracture or left ankle tendinitis is supported by sufficient evidence and is affirmed.

MMI

The ALJ's determination that the claimant reached MMI on December 16, 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. 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 16, 2020, with a two percent IR in accordance with the certification of Dr. P, the designated doctor. Dr. P examined the claimant on December 16, 2020, and in the adopted certification, assigned the two percent IR based on the compensable conditions of a left foot sprain and a left ankle sprain. 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. P assessed two percent impairment based on range of motion (ROM) deficits in the left ankle and left hindfoot. There was a mistake in Dr. P's left foot impairment calculation. Dr. P assigned impairment based on the following left ankle and hindfoot measurements: flexion 45°; extension 52°; inversion 20°; and eversion 30°. According to Tables 42 and 43 on page 3/78 of the AMA Guides, the claimant's ROM measurements of flexion, extension and eversion result in zero percent impairment. However, according to Table 43 on page 3/78, 20° of inversion results in a one percent whole person impairment (WPI), instead of a two percent WPI as certified by Dr. P.

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. P. After a mathematical correction, that finding is supported by the evidence. Accordingly, we reverse the ALJ's determination that the claimant's IR is two percent, and we render a new decision that the claimant's IR is one percent, as mathematically corrected.

SUMMARY

We affirm the ALJ's determination that the compensable injury of (date of injury), does not extend to a left foot fracture or left ankle tendinitis.

We affirm the ALJ's determination that the claimant reached MMI on December 16, 2020.

We reverse the ALJ's determination that the claimant's IR is two percent, and we render a new decision that the claimant's IR is one percent, as mathematically corrected.

The true corporate name of the insurance carrier is **SAFETY NATIONAL CASUALTY CORPORATION** and the name and address of its registered agent for service of process is

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

Cristina Beceiro
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge