

APPEAL NO. 220645
FILED JUNE 2, 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 (CCH) was held on October 27, 2021, with the record closing on March 9, 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 respondent (claimant) reached maximum medical improvement (MMI) on March 17, 2021; and (2) the claimant's impairment rating (IR) is 19%. The appellant (carrier) appealed the ALJ's determinations. The carrier asserts on appeal that the ALJ's discussion contained an error regarding the nature of the compensable injury and the certification issued by (Dr. O), the carrier-selected post-designated doctor required medical examination doctor. The claimant responded, urging affirmance of the disputed determinations.

DECISION

Affirmed.

The parties stipulated, in part, that: (1) the claimant sustained a compensable injury on (date of injury); (2) the carrier accepted at least a cervical sprain, right shoulder sprain, right shoulder strain, and a right forearm contusion; (3) based on a July 23, 2020, decision and order, the compensable injury extends to a cervical strain, right shoulder supraspinatus tear, right shoulder glenoid labrum tear, and right shoulder impingement syndrome; (4) (Dr. A) was appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division) as the designated doctor to determine MMI and IR; and (5) the date of statutory MMI is March 17, 2021. The evidence reflects that the claimant was injured on (date of injury), while working as a rigger, and he tripped and fell, hitting a cement block. We note that in the ALJ's decision, she indicated that the claimant testified; however, the record indicates that the claimant did not testify at the CCH.

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).

The ALJ determined the claimant reached MMI on March 17, 2021, and the claimant's IR is 19% in accordance with an amended certification by Dr. A, the designated doctor. The ALJ's determinations are supported by sufficient evidence and are affirmed. However, a decision is being written to clarify statements made by the ALJ in her discussion.

Dr. O examined the claimant on June 3, 2021. The ALJ stated in her decision that, "Dr. [O's] report did not specifically identify the degloving injury, nor adequately explain the date of [MMI]." The evidence reflects that Dr. O certified that the claimant reached MMI on February 5, 2021, because the claimant's range of motion measurements on that date were the same as the measurements on the date of statutory MMI. Dr. O did not consider whether additional treatment could reasonably be anticipated to result in further material recovery from or lasting improvement to the claimant's injury. The ALJ's statement that Dr. O did not adequately explain the date of MMI is supported by sufficient evidence. However, the evidence reflects that there is no degloving injury in this case. The ALJ specifically found that the preponderance of the evidence is not contrary to Dr. A's certification that the claimant reached MMI on March 17, 2021, with a 19% IR. This finding is supported by sufficient evidence. Under the circumstances of this case, we view the ALJ's statement in her discussion that Dr. O did not identify a degloving injury as a typographical error that does not affect the outcome of the case. See Appeals Panel Decision 220307, decided April 20, 2022. Accordingly, we affirm the ALJ's determinations that the claimant reached MMI on March 17, 2021, and the claimant's IR is 19%.

The true corporate name of the insurance carrier is **OLD REPUBLIC GENERAL INSURANCE CORPORATION** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
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