

APPEAL NO. 220745
FILED JULY 1, 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 24, 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 tear of the scapholunate ligament in the right wrist or a tear of the triangular fibrocartilage in the right wrist; (2) the appellant's (claimant) date of maximum medical improvement (MMI) is August 12, 2020; and (3) the claimant's impairment rating (IR) is three percent. The claimant appealed, disputing the ALJ's determinations of extent of injury, MMI, and IR. The respondent (carrier) responded, urging affirmance of the disputed extent of injury, MMI, and IR determinations.

DECISION

Affirmed in part and reversed and remanded in part.

The parties stipulated that on (date of injury), the claimant sustained a compensable injury in the form of at least a cervical strain, lumbar strain, thoracic sprain, and right wrist sprain and the Texas Department of Insurance, Division of Workers' Compensation (Division) selected (Dr. H) as designated doctor for the issues of MMI and IR. The claimant testified she was injured during the course and scope of her employment which required repetitive motions and required prolonged sitting in an awkward position.

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 tear of the scapholunate ligament in the right wrist or a tear of the triangular fibrocartilage in the right wrist is supported by sufficient evidence and is affirmed.

MMI

The ALJ's determination that the claimant's date of MMI is August 12, 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. 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.

Dr. H examined the claimant on January 6, 2021, and certified that the claimant reached MMI on August 12, 2020, and assessed a three percent 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). Dr. H assessed zero percent impairment for the claimant's cervical spine, lumbar spine, and thoracic spine. Dr. H noted in his narrative report of January 6, 2021, the following range of motion (ROM) measurements for the right wrist: flexion 49°; extension 50°; radial deviation 15°; and ulnar deviation 35°. Dr. H correctly rounded the measurements taken for loss of ROM for flexion and assessed two percent upper extremity (UE) impairment and two percent UE impairment for loss of ROM of extension.

However, Dr. H incorrectly applied Figure 29 on page 3/38 of the AMA Guides in assessing impairment for radial deviation. Dr. H found 15° of radial deviation for which he assigned one percent UE impairment, and 35° ulnar deviation for zero percent UE impairment. Figure 29 uses increments of 5°, whereas the general directions on page 3/37 state to round the measurements of radial deviation to the nearest 10°. This conflict is resolved by looking to the general directions of interpolating, measuring, and rounding off which are found on page 2/9 of the AMA Guides and which provide as follows in relevant part:

In general, an impairment value that falls between those appearing in a table or figure of the *Guides* may be adjusted or interpolated to be proportional to the interval of the table or figure involved, unless the book gives other directions.

Here the AMA Guides do give other directions than applying the values given in Figure 29 on page 3/38. Those directions are on page 3/37 and provide that the measurements be rounded to the nearest 10°. Using the language cited above from page 2/9 of the AMA Guides, these directions control over Figure 29 and should have been applied in calculating the claimant's IR. See Appeals Panel Decision (APD) 022504-s, decided November 12, 2002; and APD 111384, decided November 23, 2011. See *also* APD 131541, decided August 29, 2013.

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 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. However, in the case on appeal, Dr. H's three percent IR cannot be corrected. Dr. H failed to round the measurements of radial deviation of the wrist to the nearest 10° to determine the UE impairment. Rounding radial deviation to derive the correct UE impairment requires medical judgment or discretion, so we cannot recalculate the correct IR using Dr. H's figures. Dr. H's three percent IR cannot be adopted.

Accordingly, we reverse the ALJ's determination that the claimant's IR is three percent. No other certification with an MMI date of August 12, 2020, is in evidence. Accordingly, we remand the IR issue to the ALJ for further action consistent with this decision.

SUMMARY

We affirm the ALJ's determination that the compensable injury of (date of injury), does not extend to a tear of the scapholunate ligament in the right wrist or a tear of the triangular fibrocartilage in the right wrist.

We affirm the ALJ's determination that the claimant's date of MMI is August 12, 2020.

We reverse the ALJ's determination that the IR is three percent and remand the IR issue to the ALJ for further action consistent with this decision.

REMAND INSTRUCTIONS

Dr. H is the designated doctor in this case. On remand, the ALJ is to determine whether Dr. H is still qualified and available to be the designated doctor.

The ALJ is to inform the designated doctor that the compensable injury of (date of injury), includes a cervical strain, lumbar strain, thoracic sprain, and a right wrist sprain but does not include a tear of the scapholunate ligament in the right wrist or a tear of the triangular fibrocartilage in the right wrist.

The ALJ is to request that the designated doctor rate the entire compensable injury based on the claimant's condition as of the date of MMI, August 12, 2020. The designated doctor is to round ROM figures as required by the AMA Guides.

The parties are to be provided the correspondence to the designated doctor, the designated doctor's response, and are to be allowed an opportunity to respond. The ALJ is then to make a determination on the IR consistent with this decision.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the ALJ, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Division, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See APD 060721, decided June 12, 2006.

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

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

Margaret L. Turner
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Carisa Space-Beam
Appeals Judge