

APPEAL NO. 220893
FILED JULY 20, 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 December 20, 2021, with the record closing on April 6, 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 bilateral rotator cuff degenerative changes, bilateral AC degenerative changes with osteophyte formation, bilateral lower extremity edema, C5 hemangioma, cervical radiculopathy, cervical disc bulges at C2 through C7, cervical degenerative disc disease C2 through C7, left shoulder rotator cuff tear, right shoulder rotator cuff tear, or bilateral lower extremities contusions; (2) the appellant (claimant) reached maximum medical improvement (MMI) on November 22, 2020; and (3) the claimant's impairment rating (IR) is 13%. The claimant appealed the ALJ's determinations. The respondent (carrier) responded, urging affirmance of the ALJ's determinations.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury), that extends to a cervical sprain/strain, thoracic sprain/strain, lumbar sprain/strain, and bilateral contusions to the upper extremities (UE); (Dr. W) was appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division) to address MMI, IR, and extent of the compensable injury; and the claimant's date of statutory MMI is November 24, 2021. The claimant was injured on (date of injury), when he misstepped while going downstairs in a dark stairwell and fell to the floor.

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 bilateral rotator cuff degenerative changes, bilateral AC degenerative changes with osteophyte formation, bilateral lower extremity edema, C5 hemangioma, cervical radiculopathy, cervical disc bulges at C2 through C7, cervical degenerative disc disease C2 through C7, left shoulder rotator cuff tear, right shoulder rotator cuff tear, or bilateral lower extremities contusions is supported by sufficient evidence and is affirmed.

MMI

The ALJ's determination that the claimant reached MMI on November 22, 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.

The ALJ determined the claimant's IR is 13% as certified by (Dr. B), the post-designated doctor required medical examination doctor. Dr. B examined the claimant on May 20, 2021. On May 20, 2021, Dr. B certified in alternate Reports of Medical Examination (DWC-69) that the claimant reached MMI on November 22, 2020, with a 13% IR. Dr. B states in his attached narrative report that one DWC-69 considered the conditions stipulated to by the parties at the CCH, as well as the disputed conditions. Because we have affirmed the ALJ's determination that the compensable injury does not extend to the disputed conditions, this certification cannot be adopted.

Dr. B's narrative report reflects that regarding his second certification Dr. B considered the conditions stipulated as compensable by the parties at the CCH, as well as contusions to the claimant's left and right hips, which are not conditions stipulated to by the parties as being compensable or actually litigated by the parties at the CCH. However, in evidence is a clarification from Dr. B dated April 5, 2022, in which he noted the compensable injury in this case is a cervical sprain/strain, thoracic sprain/strain, lumbar spine sprain/strain, and bilateral contusions to the UEs, and the compensable injury does not extend to contusions to the claimant's left and right hips. Dr. B stated

his certification that the claimant reached MMI on November 22, 2020, with a 13% IR remained unchanged even with excluding the left and right hip contusions.

Regarding his 13% IR assignment, Dr. B stated in his May 20, 2021, attached narrative report that

[Dr. W's] examination of December 30, 2020[,] is the closest examination to the date of MMI. I concur with [Dr. W's] rationale for assigning 13% (I have reviewed his report and it is correct, based upon his measurements).

In evidence is Dr. W's December 30, 2020, report relied upon by Dr. B. Dr. W's attached narrative report reflects that he assigned 13% 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. W placed the claimant in Diagnosis-Related Estimate (DRE) Lumbosacral Category II: Minor Impairment of the AMA Guides for 5% impairment for the claimant's lumbar spine. Dr. W also assigned 13% UE impairment for the claimant's right shoulder based on range of motion (ROM) deficits, and 10% UE impairment for the claimant's left shoulder based on ROM deficits. These assigned UE impairments were made in accordance with the AMA Guides.

Dr. W then combined 13% UE impairment with 10% UE impairment for 22% UE impairment. Using Table 20 on page 3/20 of the AMA Guides, Dr. W converted 22% UE impairment to 13% whole person impairment (WPI). Dr. W then combined 13% WPI with 5% impairment for the claimant's lumbar spine for a total IR of 17%. We note that Dr. B stated in an amendment dated November 16, 2021, to his narrative report that he disagreed with Dr. W's placing the claimant in DRE Lumbosacral Category II: Minor Impairment. Dr. B stated the appropriate rating for the claimant's lumbar spine is DRE Lumbosacral Category I: Complaints or Symptoms for 0% IR, and, therefore, the claimant's final IR is 13%.

The AMA Guides provide on page 3/17 that if both limbs are involved, calculate the WPI for each on a separate chart and combine the percents of each limb. See Appeals Panel Decision (APD) 192264, decided February 6, 2020; and APD 130633, decided April 24, 2013. Dr. W failed to calculate the WPI for each limb prior to combining the percents for each limb; therefore, his 13% IR for the claimant's right and left shoulders is incorrect, which makes Dr. B's assigned 13% IR incorrect as well.

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 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.

As previously noted, Dr. W's 13% UE impairment for the claimant's right shoulder and 10% UE impairment for the left shoulder were made in accordance with the AMA Guides. Using Table 20 on page 3/20 of the AMA Guides, 13% UE impairment converts to 8% WPI, and 10% UE impairment converts to 6% WPI. Combining 8% WPI and 6% WPI as instructed on page 3/17 of the AMA Guides results in 14% WPI for the claimant's right and left shoulders. Combining 14% WPI for the claimant's right and left shoulders with 0% WPI for the claimant's lumbar spine results in a total IR of 14%.

The ALJ found that Dr. B's certification is supported by the preponderance of the 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 13%, and we render a new decision that the claimant's IR is 14% as mathematically corrected.

SUMMARY

We affirm the ALJ's determination that the compensable injury of (date of injury), does not extend to bilateral rotator cuff degenerative changes, bilateral AC degenerative changes with osteophyte formation, bilateral lower extremity edema, C5 hemangioma, cervical radiculopathy, cervical disc bulges at C2 through C7, cervical degenerative disc disease C2 through C7, left shoulder rotator cuff tear, right shoulder rotator cuff tear, or bilateral lower extremities contusions.

We affirm the ALJ's determination that the claimant reached MMI on November 22, 2020.

We reverse the ALJ's determination that the claimant's IR is 13%, and we render a new decision that the claimant's IR is 14% as mathematically corrected.

The true corporate name of the insurance carrier is **ZURICH AMERICAN INSURANCE COMPANY** 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.**

Carisa Space-Beam
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Margaret L. Turner
Appeals Judge