

APPEAL NO. 220931  
FILED JULY 14, 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 7, 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 appellant (claimant) reached maximum medical improvement (MMI) on May 12, 2020; and (2) the claimant's impairment rating (IR) is 0%. The claimant appeals the ALJ's determinations of MMI and IR. Respondent 1 (carrier) responded, urging affirmance of the issues of MMI and IR. There was no response from Respondent 2 (subclaimant) to the claimant's appeal in the appeal file.

DECISION

Reversed and remanded.

The parties stipulated, in part, that for the purposes of determining MMI and IR, the compensable injury of (date of injury), is a traumatic brain injury, concussion, chest contusion, and seizures; (Dr. Q) was selected by the Texas Department of Insurance, Division of Workers' Compensation (Division) as the designated doctor to determine extent of injury, MMI, and IR; and the date of statutory MMI is May 12, 2020. The evidence indicates that the claimant was injured on (date of injury), when he was struck in the chest by a cow and fell back, hitting his head.

MMI/IR

Section 401.011(30)(A) defines MMI as "the earliest date after which, based on reasonable medical probability, further material recovery from or lasting improvement to an injury can no longer reasonably be anticipated." Section 408.1225(c) provides that the report of the designated doctor has presumptive weight, and the Division shall base its determination of whether the employee has reached MMI on the report of the designated doctor unless the preponderance of the other medical evidence is to the contrary.

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 May 12, 2020, with a 0% IR in accordance with the certification of (Dr. G), a carrier-selected required medical examination doctor. Dr. G examined the claimant on January 13, 2022, and stated in his narrative report that he was appointed to address IR and was not asked to opine on MMI. He goes on to state that the best supported date of clinical MMI is when the claimant was last seen at (healthcare facility) on June 2, 2018. After this date, Dr. G states that the only thing that happened are multiple false seizures. However, the accompanying Report of Medical Evaluation (DWC-69) certifies that the claimant reached MMI on May 12, 2020, rather than June 2, 2018. There is no explanation from Dr. G for placing the claimant at MMI on the statutory date of May 12, 2020.

Therefore, there is an internal inconsistency between the MMI date Dr. G certified on the DWC-69 and the MMI date Dr. G used in the accompanying narrative report. Because the narrative report and DWC-69 list different dates regarding when the claimant reached MMI, we do not consider that internal inconsistency to be a clerical error that can be corrected. See Appeals Panel Decision (APD) 220068, decided March 3, 2022. Accordingly, the ALJ's determination that the claimant reached MMI on May 12, 2020, is reversed.

With regard to the IR, Rule 130.1(c)(3) provides that an assignment of IR shall be based on the claimant's condition as of the MMI date. Given that we have reversed the ALJ's MMI determination, we reverse the ALJ's determination that the claimant's IR is 0%.

Dr. Q, the designated doctor, examined the claimant on November 16, 2020, and in alternate amended certifications, certified that the claimant reached MMI on May 12, 2020, with a 20% IR. In one certification, Dr. Q considered the accepted conditions of traumatic brain injury, concussion, chest contusion, and seizures as well as psychotic disorder with hallucinations and liver disease. As this certification considered conditions that have not been accepted or yet determined to be compensable, it cannot be adopted. In the other certification, Dr. Q considered and rated the compensable conditions of traumatic brain injury, concussion, chest contusion, and seizures. 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. Q assigned a 7% impairment for mental status impairment in accordance with the recommendation of (Dr. Ga), the referral neuropsychologist. He then assigned 14% impairment for the seizures. Dr. Q combined the 7% impairment with the 14% impairment for a whole person impairment

of 20%. Dr. Ga stated in his report that the claimant had returned to baseline. As the ALJ noted in her discussion of the evidence, he then failed to adequately explain the 7% impairment for mental status impairment. The ALJ found that the preponderance of the other medical evidence is contrary to the date of MMI and assigned IR as certified by Dr. Q. That finding is supported by sufficient evidence and is affirmed; therefore, Dr. Q's certification cannot be adopted.

Since there is no certification of MMI and IR in evidence that can be adopted, we remand the issues of MMI and IR to the ALJ for further action consistent with this decision.

### **REMAND INSTRUCTIONS**

Dr. Q is the designated doctor in this case. On remand, the ALJ is to determine whether Dr. Q is still qualified and available to be the designated doctor. If Dr. Q is no longer qualified or is no longer available to serve as the designated doctor, then another designated doctor is to be appointed to determine the claimant's MMI and IR for the (date of injury), compensable injury.

The ALJ is to advise the designated doctor that the compensable injury of (date of injury), extends to traumatic brain injury, concussion, chest contusion, and seizures and that the date of statutory MMI is May 12, 2020. The ALJ is to request that the designated doctor give an opinion on the claimant's date of MMI, which cannot be later than May 12, 2020, and rate the entire compensable injury in accordance with the AMA Guides considering the medical record and the certifying examination. The ALJ is to request further explanation regarding the assigned impairment for mental status impairment.

The parties are to be provided with the designated doctor's new MMI/IR certification and are to be allowed an opportunity to respond. The ALJ is then to make a determination on MMI and IR that is consistent with the evidence and 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 **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**RICHARD J. GERGASKO, PRESIDENT  
2200 ALDRICH STREET  
AUSTIN, TEXAS 78723.**

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Cristina Beceiro  
Appeals Judge

CONCUR:

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Carisa Space-Beam  
Appeals Judge

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Margaret L. Turner  
Appeals Judge