

APPEAL NO. 220999
FILED AUGUST 11, 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 May 5, 2022, with the record closing on May 23, 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 10, 2021; and (2) the claimant's impairment rating (IR) is five percent. The claimant appealed the ALJ's determinations of MMI and IR. The respondent (carrier) responded to the claimant's appeal, urging affirmance of the ALJ's determinations.

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 in the form of a peroneus brevis tendon tear of the right ankle; and (2) the Texas Department of Insurance, Division of Workers' Compensation (Division) appointed (Dr. C) as designated doctor to address the date of MMI and IR. The claimant testified that he was injured on (date of injury), when his right foot got caught in between two pallets. He stated that his right ankle popped when he pulled it out.

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).

MMI

The ALJ's determination that the claimant reached MMI on May 10, 2021, 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 that the claimant reached MMI on May 10, 2021, with a five percent IR in accordance with the certification of Dr. C, the designated doctor. Dr. C examined the claimant on August 9, 2021, and assigned the five percent IR based on the compensable condition of a right peroneus brevis tendon tear. 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. C assessed five percent impairment based on range of motion (ROM) deficits in the right ankle. We note that although Dr. C stated in the IR section of his narrative that he rated the left ankle, the examination portion of his report indicates that the right ankle was assessed. However, there was a mistake in Dr. C's impairment calculation. Dr. C assigned impairment based on the following right ankle measurements: plantar flexion 19° (three percent); dorsiflexion (extension) 17° (zero percent); inversion 4° (one percent); and eversion 6° (one percent). According to Tables 42 and 43 on page 3/78 of the AMA Guides, Dr. C's assessments for the claimant's ROM measurements of plantar flexion, dorsiflexion, and eversion are correct. However, according to Table 43 on page 3/78, 4° of inversion results in a two percent whole person impairment (WPI), instead of a one percent WPI as certified by Dr. C. Combining three percent impairment for plantar flexion, two percent impairment for inversion, and one percent impairment for eversion results in a six percent WPI, instead of a five percent WPI.

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. C. After a mathematical correction, that finding is

supported by the evidence. Accordingly, we reverse the ALJ's determination that the claimant's IR is five percent, and we render a new decision that the claimant's IR is six percent, as mathematically corrected.

SUMMARY

We affirm the ALJ's determination that the claimant reached MMI on May 10, 2021.

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

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