

APPEAL NO. 221060  
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 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 compensable injury of (date of injury), extends to a mild traumatic brain injury with loss of consciousness/concussion; (2) the compensable injury of (date of injury), does not extend to post-concussion syndrome; (3) the appellant (claimant) reached maximum medical improvement (MMI) on July 14, 2021; and (4) the claimant's impairment rating (IR) is 0%. The claimant appealed, disputing the ALJ's extent-of-injury determination that was adverse to him, as well as the ALJ's MMI and IR determinations. The respondent (carrier) responded, urging affirmance of the appealed determinations. The ALJ's determination that the compensable injury extends to a mild traumatic brain injury with loss of consciousness/concussion was not appealed and has become final pursuant to Section 410.169.

**DECISION**

Affirmed in part and reversed and remanded in part.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury), that extends to at least a cervical sprain/strain, lumbar contusion, and a closed head injury for the purposes of determining MMI and IR, and the carrier also accepted a mild traumatic brain injury with loss of consciousness/concussion as included in the claimant's compensable injury. The claimant was injured when he slipped and fell backwards off the top step of his truck cab. The claimant testified he landed on his back and struck the back of his head on a caliche surface, which caused him to lose consciousness.

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 post-concussion syndrome is supported by sufficient evidence and is affirmed.

### **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 Texas Department of Insurance, Division of Workers' Compensation (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 the claimant reached MMI on July 14, 2021, with a 0% IR as certified by (Dr. L), a successor designated doctor. Dr. L examined the claimant on February 10, 2022, and on that date certified the claimant reached MMI on July 14, 2021, and assigned a 0% 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. L's narrative report reflects his certification is based, in part, on post-concussion syndrome. The ALJ's determination that the compensable injury of (date of injury), does not extend to post-concussion syndrome has been affirmed. Dr. L considered a condition that was determined to not be part of the compensable injury. Accordingly, we reverse the ALJ's determinations that the claimant reached MMI on July 14, 2021, with a 0% IR.

There are other certifications in evidence, which are from (Dr. K), the initial designated doctor, and (Dr. H), a referral doctor selected to act on behalf of the treating doctor. Dr. K examined the claimant on October 18, 2021, and issued three certifications. In the first certification Dr. K certified the claimant reached MMI on July 13, 2021, with a 0% IR considering a mild traumatic brain injury with loss of consciousness, a cervical sprain/strain, and a lumbar contusion. This certification did

not consider a closed head injury, which is part of the compensable injury. In the second and third certification Dr. K opined the claimant had not reached MMI. However, both of these certifications consider post-concussion syndrome, which has been determined to not be part of the compensable injury. Dr. K's certifications cannot be adopted.

Dr. H examined the claimant on April 10, 2022, and certified on April 19, 2022, that the claimant reached MMI on July 14, 2021, with a 10% IR. Dr. H states in his attached narrative report that he considered, among other conditions, "post-concussional syndrome," and an "unspecified injury" of the head. Dr. H did not consider and rate the compensable injury in this case, and therefore his certification cannot be adopted.

There is no certification of MMI and IR in evidence that can be adopted. Accordingly, we remand the issues of MMI and IR 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 post-concussion syndrome.

We reverse the ALJ's determination that the claimant reached MMI on July 14, 2021, and we remand the issue of MMI to the ALJ for further action consistent with this decision.

We reverse the ALJ's determination that the claimant's IR is 0%, and we remand the issue of IR to the ALJ for further action consistent with this decision.

### **REMAND INSTRUCTIONS**

Dr. L is the designated doctor in this case. On remand the ALJ is to determine whether Dr. L is still qualified and available to be the designated doctor. If Dr. L is no longer qualified or 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 compensable injury of (date of injury).

The ALJ is to advise the designated doctor that the compensable injury of (date of injury), extends to a cervical sprain/strain, lumbar contusion, closed head injury, and a mild traumatic brain injury with loss of consciousness/concussion. The ALJ is also to advise the designated doctor that the compensable injury of (date of injury), does not extend to post-concussion syndrome.

The parties are to be allowed an opportunity to respond. The ALJ is then to determine the issues of MMI and 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 Appeals Panel Decision 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **ACCIDENT FUND GENERAL 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.**

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Carisa Space-Beam  
Appeals Judge

CONCUR:

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Cristina Beceiro  
Appeals Judge

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Margaret L. Turner  
Appeals Judge