

APPEAL NO. 221062
FILED AUGUST 17, 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 January 18, 2022, February 22, 2022, and March 29, 2022, with the record closing on May 3, 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 right shoulder supraspinatus tear, right shoulder glenohumeral joint effusion, right shoulder subacromial/sub-deltoid bursitis, right wrist triangular fibrocartilage complex (TFCC) tear, right wrist volar carpal ganglion cyst, right wrist trapeziometacarpal osteoarthritis, right wrist effusion, right wrist bone edema within the lunate, right wrist tenosynovitis of the second dorsal extensor compartment, right wrist carpi ulnaris tendon strain, left shoulder strain, or left wrist strain; (2) the appellant (claimant) reached maximum medical improvement (MMI) on August 25, 2021; and (3) the claimant's impairment rating (IR) is three percent. The claimant appealed the ALJ's determinations. The appeal file does not contain a response from the respondent (self-insured).

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 right shoulder strain and right wrist strain, and that (Dr. C) was appointed as the designated doctor by the Texas Department of Insurance, Division of Workers' Compensation (Division) to address MMI, IR, and extent of the compensable injury. The claimant was injured on (date of injury), while operating a stiff master control on the train she was operating.

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 right shoulder supraspinatus tear, right shoulder glenohumeral joint effusion, right shoulder subacromial/sub-deltoid bursitis, right wrist TFCC tear, right wrist volar carpal ganglion cyst, right wrist trapeziometacarpal osteoarthritis, right wrist effusion, right wrist bone edema within the lunate, right wrist tenosynovitis of the second dorsal extensor compartment, right wrist carpi ulnaris tendon strain, left shoulder strain, or left wrist strain is supported by sufficient evidence and is affirmed.

MMI

The ALJ's determination that the claimant reached MMI on August 25, 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 the claimant's IR is three percent as certified by Dr. C, the designated doctor. Dr. C examined the claimant on October 26, 2021, and issued two certifications. In the first certification Dr. C certified the claimant reached MMI on August 25, 2021, with a four percent IR based on a right shoulder sprain, right wrist sprain, left shoulder sprain/strain, and left wrist strain, among other conditions. This certification does not consider and rate the compensable injury in this case, which is a right shoulder strain and a right wrist strain. In the second certification Dr. C certified the claimant reached MMI on August 25, 2021, with a three percent IR based on a right shoulder sprain and a right wrist sprain rather than a right shoulder strain and a right wrist strain.

On April 8, 2022, the ALJ sent Dr. C a letter of clarification (LOC) notifying him the compensable injury is a right shoulder strain and a right wrist strain. The ALJ also correctly pointed out an error in Dr. C's IR calculation for the claimant's right wrist. Specifically, the ALJ noted Dr. C's assignment of two percent upper extremity (UE) impairment based on 40° of wrist extension results in four percent UE impairment, and that based on the range-of-motion measurements of the claimant's right shoulder and

wrist used by Dr. C, the claimant's whole person impairment should be four percent rather than three percent. Dr. C responded on April 10, 2022, with an amended certification. However, Dr. C's amended certification again considered a right shoulder sprain and a right wrist sprain. Additionally, while his narrative report reflected a four percent IR, Dr. C failed to correct the IR contained on the Report of Medical Evaluation (DWC-69) to a four percent IR.

On April 20, 2022, the ALJ sent Dr. C another LOC, again pointing out that the compensable injury is a right shoulder strain and a right wrist strain, and requested Dr. C to submit a corrected certification considering these conditions. Dr. C responded that same date and submitted an amended certification that the claimant reached MMI on August 25, 2021, with a four percent IR based on a right shoulder strain and a right wrist strain.

The ALJ found that, in response to an LOC, Dr. C certified the claimant's IR is three percent, and that the preponderance of the other medical evidence is not contrary to this certification. However, as noted above, Dr. C amended his certification to reflect the claimant's IR is four percent in response to the ALJ's LOC notifying Dr. C of the errors in his certification. Dr. C's four percent IR considered the compensable injury in this case and was made in accordance with 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). The ALJ mistakenly found that Dr. C assessed an IR of three percent rather than the four percent Dr. C actually assessed on his amended DWC-69 in response to the ALJ's LOC. Because the ALJ references the incorrect IR in connection with Dr. C's IR throughout her decision, we cannot make a clerical correction. See Appeals Panel Decision (APD) 122622, decided February 15, 2013; see *also* APD 162622, decided February 27, 2017; and APD 211816, decided December 30, 2021. Accordingly, we reverse the ALJ's determination that the claimant's IR is three percent, and we render a new decision that the claimant's IR is four percent to conform to Dr. C's amended certification.

SUMMARY

We affirm the ALJ's determination that the compensable injury of (date of injury), does not extend to right shoulder supraspinatus tear, right shoulder glenohumeral joint effusion, right shoulder subacromial/sub-deltoid bursitis, right wrist TFCC tear, right wrist volar carpal ganglion cyst, right wrist trapeziometacarpal osteoarthritis, right wrist effusion, right wrist bone edema within the lunate, right wrist tenosynovitis of the second dorsal extensor compartment, right wrist carpi ulnaris tendon strain, left shoulder strain, or left wrist strain.

We affirm the ALJ's determination that the claimant reached MMI on August 25, 2021.

We reverse the ALJ's determination that the claimant's IR is three percent, and we render a new decision that the claimant's IR is four percent to conform to Dr. C's amended certification.

The true corporate name of the insurance carrier is **(a certified self-insured)**
and the name and address of its registered agent for service of process is

(NAME)
(ADDRESS)
(CITY), (STATE) (ZIP CODE).

Carisa Space-Beam
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Margaret L. Turner
Appeals Judge