

APPEAL NO. 221118
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 June 1, 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 sustained on (date of injury), does not extend to left wrist carpal tunnel syndrome (CTS); (2) the appellant (claimant) reached maximum medical improvement (MMI) on September 9, 2021; and (3) the claimant's impairment rating (IR) is five percent. The claimant appealed, disputing the ALJ's determinations of extent of injury, MMI, and IR. The respondent (carrier) responded, urging affirmance of the disputed extent-of-injury condition, MMI, and IR determinations.

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), at least in the form of bilateral trigger middle fingers and that the Texas Department of Insurance, Division of Workers' Compensation (Division) appointed (Dr. J) as designated doctor to address whether the claimant reached MMI, and if so, to assign an IR, and the extent of the compensable injury. The claimant testified she was injured performing her job duties as an administrative assistant II for the employer.

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 left wrist CTS is supported by sufficient evidence and is affirmed.

MMI

The ALJ's determination that the claimant reached MMI on September 9, 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.

The ALJ determined that the claimant's IR is five percent as certified by Dr. J, the designated doctor appointed by the Division. Dr. J examined the claimant on September 9, 2021, and certified that the claimant reached MMI on September 9, 2021, and assigned a five percent 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. J noted in his narrative report that his MMI/IR certification is based on the claimant's bilateral middle trigger fingers. In his narrative report, Dr. J referenced Figure 1 to reflect range of motion (ROM) measurements for the left and right fingers. Dr. J assigned three percent whole person impairment (WPI) for the left trigger finger and two percent WPI for the right trigger finger. Dr. J combined the three percent impairment assigned for the left upper extremity (UE) with the two percent impairment assigned for the right UE for a total of five percent impairment. However, a review of the record reflects that only Figure 1 for the right hand was admitted into evidence.

28 Tex. Admin. Code §130.1(c)(3) (Rule 130.1(c)(3)) provides, in pertinent part, that the assignment of an IR shall be based on the injured employee's condition on the MMI date considering the medical record and the certifying examination, and the doctor assigning the IR shall:

- (A) identify objective clinical or laboratory findings of permanent impairment for the current compensable injury;
- (B) document specific laboratory or clinical findings of an impairment;
- (C) analyze specific clinical and laboratory findings of an impairment;
- (D) compare the results of the analysis with the impairment criteria and provide the following:

- (i) [a] description and explanation of specific clinical findings related to each impairment, including zero percent [IRs]; and
- (ii) [a] description of how the findings relate to and compare with the criteria described in the applicable chapter of the AMA Guides. The doctor's inability to obtain required measurements must be explained.

Dr. J's narrative accompanying his Report of Medical Evaluation (DWC-69) does not document clinical findings from an examination of the claimant's left middle trigger finger that was used to assess impairment; therefore, his narrative report does not comply with Rule 130.1(c)(3). Accordingly, Dr. J's assessment of IR cannot be adopted.

There is no other certification of MMI/IR in evidence. Consequently, we reverse the ALJ's determination that the claimant's IR is five percent, and we remand the issue of the claimant's IR to the ALJ for further action consistent with this decision.

SUMMARY

We affirm the ALJ's determination that the (date of injury), compensable injury does not extend to left wrist CTS.

We affirm the ALJ's determination that the claimant reached MMI on September 9, 2021.

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

REMAND INSTRUCTIONS

Dr. J is the designated doctor. If a new assessment of IR is necessary in this case, the ALJ is to determine whether Dr. J is still qualified and available to be the designated doctor. If Dr. J is no longer qualified or available to serve as the designated doctor, then another designated doctor is to be appointed pursuant to Division rules to determine IR. The ALJ is to inform the designated doctor that the compensable injury extends to bilateral trigger middle fingers but does not extend to left wrist CTS. On remand the ALJ is to instruct the designated doctor to provide all measurements that were used to calculate the IR per Rule 130.1(c)(3). The parties are to be provided with the ALJ's letter to the designated doctor, the designated doctor's response, and allowed an opportunity to respond. The ALJ is to make a determination

of the claimant's IR as of the September 9, 2021, date of MMI that is supported by the evidence and is 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 **LM INSURANCE CORPORATION** 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.**

Margaret L. Turner
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Carisa Space-Beam
Appeals Judge