

APPEAL NO. 221159
FILED SEPTEMBER 1, 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 16, 2022, with the record closing on June 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 appellant (claimant) reached maximum medical improvement (MMI) on December 4, 2018; and (2) the claimant's impairment rating (IR) is 5%. 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 of MMI and IR.

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 which extends to a right hand sprain/strain and right wrist strain; and (2) the Texas Department of Insurance, Division of Workers' Compensation (Division) appointed (Dr. G) as the designated doctor to determine the issues of extent of injury, MMI, and IR. The claimant testified that he was injured on (date of injury), while working as desktop support when he was holding a lobby door open and his right wrist was bent backwards, injuring his right wrist and hand.

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 December 4, 2018, 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 December 4, 2018, with a 5% IR in accordance with the amended certification of Dr. G, the designated doctor. Dr. G examined the claimant on April 10, 2021, and following two letters of clarification dated November 16, 2021, and May 20, 2022, assigned the 5% IR based on the compensable conditions of a right hand sprain/strain and right wrist strain 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. G assessed a 1% hand impairment for the right thumb based on range of motion (ROM) measurements and assigned a 1% hand impairment for the claimant's right index finger based on ROM measurements. She assessed 0% impairment for ROM measurements of the claimant's right middle, ring, and little fingers. She then added the right thumb and index impairments resulting in a 2% hand impairment which converts to a 2% upper extremity (UE) impairment. Dr. G then assigned a 6% UE impairment based on ROM deficits in the claimant's right wrist. Finally, Dr. G assigned 2% UE impairment based on ROM deficits in the claimant's right elbow. Dr. G then mistakenly combined a 1% impairment for the right hand, instead of her calculation of 2% UE impairment for the right hand, with 6% for the right wrist and 2% impairment for the right elbow for a total 9% UE impairment. She then converted the 9% UE to a whole person impairment (WPI) of a 5%.

There was also a mistake in Dr. G's right thumb impairment calculation. In calculating the right thumb impairment, Dr. G used the following ROM measurements: 70° of interphalangeal (IP) flexion (1%); 0° of IP extension (0%); 52° of metacarpophalangeal (MP) flexion (1%); +20° of MP extension (0%); 42° of radial abduction (1%); 0 cm of adduction (0%); and 8 cm of opposition (0%). Dr. G then added the joint impairments which resulted in 3% digit impairment and converted that to a 1% hand impairment. Dr. G stated that 0° of IP extension in the right thumb resulted in 0% impairment, but Figure 10 on page 3/26 of the AMA Guides indicates that 0° of IP extension for the thumb results in 1% impairment. Adding the 1% impairment for IP extension to the other right thumb joint impairments results in a 4% thumb impairment which converts to a 2% hand impairment, not a 1% hand impairment as determined by Dr. G. Adding the 2% hand impairment for the right thumb with the 1% hand

impairment for the right index finger results in a 3% hand impairment which converts to a 3% UE impairment for the right hand, not a 2% UE impairment as determined by Dr. G. Combining 3% UE impairment for the right hand, 6% UE impairment for the right wrist, and 2% UE impairment for the right elbow results in a 11% total UE impairment which converts to a WPI of 7%, not a 5% WPI as determined by Dr. G.

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 IR by Dr. G. After a mathematical correction, that finding is supported by the evidence. Accordingly, we reverse the ALJ's determination that the claimant's IR is 5%, and we render a new decision that the claimant's IR is 7% as mathematically corrected.

SUMMARY

We affirm the ALJ's determination that the claimant reached MMI on December 4, 2018.

We reverse the ALJ's determination that the claimant's IR is 5%, and we render a new decision that the claimant's IR is 7% as mathematically corrected.

The true corporate name of the insurance carrier is **FEDERAL 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 75201-4284.**

Cristina Beceiro
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge