

APPEAL NO. 221440
FILED OCTOBER 6, 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 August 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 appellant (claimant) reached maximum medical improvement (MMI) on December 2, 2021; and (2) the claimant's impairment rating (IR) is 0%. The claimant appealed the ALJ's determinations of MMI and IR. The respondent (self-insured) 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 wrist sprain/strain, right thumb sprain/strain, and right De Quervain's tenosynovitis; and (2) the Texas Department of Insurance, Division of Workers' Compensation (Division) appointed (Dr. D) as the designated doctor to determine the issues of MMI and IR. The claimant testified that she was injured on (date of injury), while working in nutrition services and mopping in the cafeteria. She stated that she was wringing out the mop by lowering a handle on a bucket when it caused her right thumb to be pulled back.

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 2, 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 December 2, 2021, with a 0% IR in accordance with the certification of Dr. D, the designated doctor. Dr. D examined the claimant on May 12, 2022, and assigned the 0% IR based on the compensable conditions of a right wrist sprain/strain, right thumb sprain/strain, and right De Quervain's tenosynovitis 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. D assessed a 1% digit impairment for the right thumb based on range of motion (ROM) measurements which she converted to a 0% hand impairment and then to a 0% upper extremity (UE) impairment. Dr. D also assigned a 0% UE impairment for the claimant's right wrist based on ROM measurements. Dr. D then combined the 0% impairment for the right thumb with 0% impairment for the right wrist for a total 0% UE impairment which converted to a whole person impairment (WPI) of 0%.

There was a mistake in Dr. D's right thumb impairment calculation. In calculating the right thumb impairment, Dr. D used the following ROM measurements: 77° of interphalangeal (IP) joint flexion (0%); 0° of IP joint extension (0%); 58° of metacarpophalangeal (MP) joint flexion (0%); 0° of MP joint extension (0%); 45° of carpometacarpal (CMC) joint abduction (0%); 0 cm of adduction (0%); and 7 cm of opposition (1%). Dr. D then added the joint impairments which resulted in a 1% digit impairment and converted that to a 0% hand impairment and 0% UE impairment. Dr. D stated that 0° of IP joint 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 joint extension for the thumb results in 1% impairment. Adding the 1% impairment for IP joint extension to the other right thumb joint impairment results in a 2% thumb impairment which converts to a 1% hand impairment and a 1% UE impairment, not a 0% UE impairment as determined by Dr. D. Combining 1% UE impairment for the right thumb and 0% UE impairment for the right wrist results in a 1% total UE impairment which converts to a WPI of 1%, not a 0% WPI as determined by Dr. D.

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. D. After a mathematical correction, that finding is supported by the evidence. Accordingly, we reverse the ALJ's determination that the claimant's IR is 0%, and we render a new decision that the claimant's IR is 1% as mathematically corrected.

SUMMARY

We affirm the ALJ's determination that the claimant reached MMI on December 2, 2021.

We reverse the ALJ's determination that the claimant's IR is 0%, and we render a new decision that the claimant's IR is 1% as mathematically corrected.

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

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

Cristina Beceiro
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge