

APPEAL NO. 221537
FILED OCTOBER 13, 2022

This appeal arises pursuant to the Texas Workers' Compensation Act, Tex. Lab. Code Ann. § 401.001 *et seq.* (1989 Act). A consolidated contested case hearing was held on August 17, 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 first certification of maximum medical improvement (MMI) and assigned impairment rating (IR) from (Dr. S) on January 19, 2022, became final under Section 408.123 and 28 Tex. Admin. Code § 130.12 (Rule 130.12); (2) the appellant (claimant) reached MMI on January 19, 2021; (3) the claimant's IR is zero percent; and (4) (Dr. V) was not appointed to serve as designated doctor on the issues of MMI, IR, and extent of injury in accordance with Section 408.0041 and Texas Department of Insurance, Division of Workers' Compensation (Division) rules. The claimant appealed, disputing the ALJ's determinations of finality, MMI, IR, and the proper appointment of Dr. V as designated doctor for MMI, IR, and extent of injury. The respondent (carrier) responded, urging affirmance of the disputed determinations.

DECISION

Affirmed in part and reversed by striking in part.

The parties stipulated, in part, that the claimant sustained a compensable injury in the form of bilateral Achilles tendon ruptures. The claimant testified that he was injured when he was going down the stairs.

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).

FINALITY

The ALJ's determination that the first certification of MMI and assigned IR from Dr. S on January 19, 2022, became final under Section 408.123 and Rule 130.12 is supported by sufficient evidence and is affirmed.

MMI

The ALJ's determination that the claimant reached MMI on January 19, 2021, is supported by sufficient evidence and is affirmed.

IR

The ALJ's determination that the claimant's IR is zero percent is supported by sufficient evidence and is affirmed.

PROPER APPOINTMENT OF DESIGNATED DOCTOR

The ALJ's finding that because the certification of MMI and assigned IR from Dr. S became final, Dr. V was not appointed as designated doctor on the issues of MMI and IR in accordance with the "Texas Labor Code and [Division] rules" is supported by sufficient evidence. However, in Conclusion of Law No. 4 and the Decision section the ALJ determined that Dr. V was not appointed to serve as designated doctor on the issues of MMI, IR, and extent of injury in accordance with Section 408.0041 and Division rules. The issue before the ALJ was as follows: Was Dr. V properly appointed to serve as designated doctor on the issues of MMI and IR in accordance with Section 408.0041 and Division rules? That portion of the ALJ's determination that Dr. V was not appointed to serve as designated doctor on the issues of MMI and IR in accordance with Section 408.0041 and Division rules is affirmed. Whether or not Dr. V was properly appointed as designated doctor on the issue of extent of injury was not an issue before the ALJ to decide nor was it litigated. Accordingly, we strike that portion of the ALJ's determination that Dr. V was not appointed to serve as designated doctor on the issue of extent of injury in accordance with Section 408.0041 and Division rules as exceeding the scope of the issue.

SUMMARY

We affirm the ALJ's determination that the first certification of MMI and assigned IR from Dr. S on January 19, 2022, became final under Section 408.123 and Rule 130.12.

We affirm the ALJ's determination that the claimant reached MMI on January 19, 2021.

We affirm the ALJ's determination that the claimant's IR is zero percent.

We affirm that portion of the ALJ's determination that Dr. V was not appointed to serve as designated doctor on the issues of MMI and IR in accordance with Section 408.0041 and Division rules.

We reverse by striking that portion of the ALJ's determination that Dr. V was not appointed to serve as designated doctor on the issue of extent of injury in accordance with Section 408.0041 and Division rules as exceeding the scope of the issue before her.

The true corporate name of the insurance carrier is **INCLINE CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**CHRISTOPHER MCCLELLAN
13215 BEE CAVE PARKWAY, SUITE B150
AUSTIN, TEXAS 78738-0059.**

Margaret L. Turner
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Carisa Space-Beam
Appeals Judge