

APPEAL NO. 221547  
FILED NOVEMBER 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 August 18, 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), extends to left shoulder PASTA lesion, left shoulder rotator cuff tendinosis, paraesthesia of the skin, left shoulder impingement syndrome, left shoulder supraspinatus/infraspinatus tendinosis with subtle articular fraying critical zone supraspinatus tendon, left circumferential labral truncation with more high-grade tearing through the superior labrum, left shoulder subscapularis tendinosis, and cervical strain; (2) the respondent (claimant) reached maximum medical improvement (MMI) on October 7, 2021; and (3) the claimant's impairment rating (IR) is 15%. The appellant (carrier) appealed the ALJ's extent of injury and IR determinations. The claimant responded, urging affirmance of the appealed determinations. The ALJ's determination that the claimant reached MMI on October 7, 2021, was not appealed and has become final pursuant to Section 410.169.

**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); the carrier has accepted a left shoulder rotator cuff strain, left elbow contusion, and left ulnar neuropathy as the compensable injury; and the claimant reached MMI on October 7, 2021, as certified by (Dr. L), the designated doctor, and (Dr. C), the post-designated doctor required medical examination (RME) doctor. The claimant was injured on (date of injury), when she fell over an open drawer and landed on her left side.

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), extends to a left shoulder PASTA lesion, left shoulder rotator cuff tendinosis, paraesthesia of the skin, left shoulder impingement syndrome, left shoulder supraspinatus/infraspinatus tendinosis with subtle articular fraying critical zone supraspinatus tendon, left circumferential labral truncation with more high-grade tearing through the superior labrum, left shoulder subscapularis tendinosis, and cervical strain 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 Texas Department of Insurance, Division of Workers' Compensation (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's IR is 15% as certified by Dr. L, the designated doctor. Dr. L initially examined the claimant on September 24, 2020, and certified that the claimant had not reached MMI. Dr. L next examined the claimant on October 4, 2021, and certified the claimant reached MMI on August 12, 2021, with a 15% IR. As discussed above, the date of MMI in this case is October 7, 2021; therefore, neither of these certifications can be adopted.

Dr. L next examined the claimant on May 23, 2022, and issued four certifications, all of which certified the claimant reached MMI on October 7, 2021, based on various conditions. Dr. L assigned a 10% IR in two of his certifications and assigned a 15% IR in the other two certifications. However, none of Dr. L's certifications consider and rate the compensable injury in this case, which is a left shoulder rotator cuff strain, left elbow contusion, left ulnar neuropathy, a left shoulder PASTA lesion, left shoulder rotator cuff tendinosis, paraesthesia of the skin, left shoulder impingement syndrome, left shoulder supraspinatus/infraspinatus tendinosis with subtle articular fraying critical zone supraspinatus tendon, left circumferential labral truncation with more high-grade tearing through the superior labrum, left shoulder subscapularis tendinosis, and cervical strain.

Dr. L's first certification assigning a 10% IR considers only the carrier-accepted conditions of a left shoulder rotator cuff strain, left elbow contusion, and left ulnar neuropathy. The other certification that assigns a 10% IR considers the carrier-

accepted conditions and left circumferential labral truncation with more high-grade tearing through the superior labrum. One of Dr. L's certifications assigning a 15% IR considers depression and anxiety, conditions which are not part of the compensable injury at this time. The other considers, among other conditions, left shoulder rotator cuff tendinopathy and a left rotator cuff sprain, conditions which are not part of the compensable injury at this time.

The only other certification in evidence from Dr. L certifying an October 7, 2021, date of MMI is dated July 1, 2022, in response to a letter of clarification sent to him by the Division on June 30, 2022. Dr. L assigned a 15% IR; however, this certification again considers left shoulder rotator cuff tendinopathy and a left rotator cuff sprain, both of which are not part of the compensable injury at this time.

There are no other certifications in evidence that certify an October 7, 2021, date of MMI and assign a 15% IR. Accordingly, we reverse the ALJ's determination that the claimant's IR is 15%.

The only other certifications in evidence that certify an October 7, 2021, date of MMI are from Dr. C, the post-designated doctor RME doctor. In all of his certifications Dr. C assigned a 10% IR based on various conditions, and all but one of Dr. C's certifications fail to consider and rate a cervical strain, which is part of the compensable injury.

Dr. C's attached narrative report indicates that his final certification considers and rates a left shoulder rotator cuff strain, left elbow contusion, left ulnar neuropathy, a left shoulder PASTA lesion, left shoulder rotator cuff tendinosis, paraesthesia of the skin, left shoulder impingement syndrome, left shoulder supraspinatus/infraspinatus tendinosis with subtle articular fraying critical zone supraspinatus tendon, left circumferential labral truncation with more high-grade tearing through the superior labrum, left shoulder subscapularis tendinosis, and a cervical 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. C assigned 14% upper extremity (UE) impairment for loss of range of motion (ROM) of the claimant's left shoulder and 3% UE impairment for loss of ROM of the left elbow. Dr. C combined these impairments for a total 17% UE impairment, and, using Table 3 on page 3/20 of the AMA Guides, converted the 17% UE impairment to 10% whole person impairment (WPI). Dr. C combined 10% WPI with 0% assigned for the claimant's cervical strain for a total IR of 10%. Dr. C's assigned 10% IR is based on the compensable injury in this case, is in compliance with the AMA Guides, and is supported by the evidence. Therefore, we render a new decision that the claimant's IR is 10% as assigned by Dr. C.

## **SUMMARY**

We affirm the ALJ's determination that the compensable injury of (date of injury), extends to a left shoulder PASTA lesion, left shoulder rotator cuff tendinosis, paraesthesia of the skin, left shoulder impingement syndrome, left shoulder supraspinatus/infraspinatus tendinosis with subtle articular fraying critical zone supraspinatus tendon, left circumferential labral truncation with more high-grade tearing through the superior labrum, left shoulder subscapularis tendinosis, and cervical strain.

We reverse the ALJ's determination that the claimant's IR is 15%, and we render a new decision that the claimant's IR is 10% as assigned by Dr. C.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**RICHARD J. GERGASKO  
2200 ALDRICH STREET  
AUSTIN, TEXAS 78723.**

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Carisa Space-Beam  
Appeals Judge

CONCUR:

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Cristina Beceiro  
Appeals Judge

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Margaret L. Turner  
Appeals Judge