

APPEAL NO. 221575  
FILED DECEMBER 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 September 8, 2022, with the record closing on September 16, 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 right shoulder sprain, right hip sprain, right knee sprain, C2-3, C3-4, C4-5, or C6-7 disc protrusions, C5-6 disc bulge, L4-5 disc protrusion, or L2-3, L3-4, or L5-S1 disc bulges; (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 (self-insured) responded, urging affirmance of the disputed extent-of-injury, MMI, and IR determinations.

**DECISION**

Affirmed as reformed.

The parties stipulated, in part, that the claimant sustained a compensable injury at least in the form of a cervical sprain, lumbar strain, right shoulder contusion, right wrist strain, right hip contusion, and right knee contusion; and the Texas Department of Insurance, Division of Workers' Compensation (Division) appointed (Dr. C) as designated doctor to address whether the claimant reached MMI, and if so, to assign an IR. The claimant testified that she was injured on (date of injury), when she slipped and fell while cleaning and sanitizing her classroom.

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 sustained on (date of injury), does not extend to a right shoulder sprain, right hip sprain, right knee sprain, C2-

3, C3-4, C4-5, or C6-7 disc protrusions, C5-6 disc bulge, L4-5 disc protrusion, or L2-3, L3-4, or L5-S1 disc bulges is supported by sufficient evidence and is affirmed.

### **MMI/IR**

Section 401.011(30)(A) defines MMI as “the earliest date after which, based on reasonable medical probability, further material recovery from or lasting improvement to an injury can no longer reasonably be anticipated.” Section 408.1225(c) provides that the report of the designated doctor has presumptive weight, and the Division shall base its determination of whether the employee has reached MMI on the report of the designated doctor unless the preponderance of the other medical evidence is to the contrary.

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 found that the preponderance of the other medical evidence was not contrary to the certification from the designated doctor, Dr. C, that the claimant reached MMI on September 9, 2021, with 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). In the certification adopted by the ALJ, Dr. C’s narrative report states that he examined the claimant on January 20, 2022, and considered the following conditions: cervical strain, lumbar strain, right shoulder contusion, right wrist strain, right hip contusion, and right knee contusion. Dr. C assessed zero percent impairment for the claimant’s right upper extremity, right lower extremity, and cervical spine. Dr. C placed the claimant in Lumbosacral Diagnosis-Related Estimate (DRE) Category II: Minor Impairment of the AMA Guides for the lumbar strain and assessed five percent impairment. As previously noted, the parties stipulated that the compensable injury includes a cervical sprain. Dr. C considered and rated a cervical strain, a condition that has not yet been determined to be a part of the compensable injury. Dr. C failed to consider and rate a cervical sprain, which the parties stipulated was a part of the compensable injury. The ALJ’s finding that Dr. C’s certification that the claimant reached MMI on September 9, 2021, with an IR of five percent is not

contrary to the preponderance of the other medical evidence is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. Accordingly, we reverse Finding of Fact No. 5.

There is one other certification in evidence. (Dr. M), a referral doctor, examined the claimant on March 31, 2022, certified that the claimant reached MMI on September 9, 2021, and assessed a five percent IR using the AMA Guides. Dr. M's narrative states he considered and rated the following conditions: cervical sprain, lumbar strain, right shoulder contusion, right wrist strain, right hip contusion, and right knee contusion. Based on range of motion measurements, Dr. M assessed zero percent impairment for the claimant's right knee contusion, right hip contusion, right wrist strain, and right shoulder contusion. Dr. M assessed zero percent impairment for the claimant's cervical sprain, placing the claimant in Cervicothoracic DRE Category I: Complaints or Symptoms. He assessed a five percent IR for the claimant's lumbar strain, placing the claimant in Lumbosacral DRE Category II: Minor Impairment. This certification considers the entire compensable injury and is supported by the evidence. Because an MMI date of September 9, 2021, and an IR of five percent are supported by the evidence, based on the report of Dr. M rather than the report of Dr. C, the ALJ's determination that the claimant reached MMI on September 9, 2021, with a five percent IR is affirmed but reformed to reflect that the claimant reached MMI on September 9, 2021, with a five percent IR per the report of Dr. M. See Appeals Panel Decision 142675, decided January 28, 2015.

### **SUMMARY**

We affirm the ALJ's determination that the compensable injury sustained on (date of injury), does not extend to a right shoulder sprain, right hip sprain, right knee sprain, C2-3, C3-4, C4-5, or C6-7 disc protrusions, C5-6 disc bulge, L4-5 disc protrusion, or L2-3, L3-4, or L5-S1 disc bulges.

We affirm as reformed the ALJ's determination that the claimant reached MMI on September 9, 2021, with a five percent IR per the report of Dr. M.

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).**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Cristina Beceiro  
Appeals Judge

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Carisa Space-Beam  
Appeals Judge