

APPEAL NO. 221581
FILED NOVEMBER 16, 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 17, 2022, with the record closing on August 26, 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 January 24, 2022; and (2) the claimant's impairment rating (IR) is five percent. The claimant appealed, disputing the ALJ's determinations of MMI and IR. The respondent (carrier) responded, urging affirmance of the disputed MMI and IR determinations.

DECISION

Reversed and remanded.

The parties stipulated, in part, that: (1) the claimant sustained a compensable injury on (date of injury), that extended to a head contusion, cervical sprain/strain, lumbar sprain/strain, right knee contusion, right elbow contusion, right ankle contusion, a C5-6 3 mm broad based disc herniation, and a C6-7 3 mm broad based disc herniation; (2) the statutory date of MMI is February 8, 2022; and (3) the Texas Department of Insurance, Division of Workers' Compensation (Division) appointed (Dr. A) as designated doctor to address the issues of MMI and IR. The claimant was injured on (date of injury), when she slipped and fell while working as a food server.

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 determined that the claimant reached MMI on January 24, 2022, with a five percent IR as certified by Dr. A, the designated doctor appointed by the Division. Dr. A examined the claimant on May 9, 2022. In his narrative report, Dr. A rated and considered the following conditions: cervical sprain/strain with disc herniations at C5-6 and C6-7, lumbar sprain/strain, right shoulder strain, right knee contusion, right ankle contusion, and a closed head injury without loss of consciousness or neurologic sequelae, 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. A placed the claimant in Cervicothoracic Diagnosis-Related Estimate (DRE) Category II: Minor Impairment for her injuries to the cervical spine. Dr. A placed the claimant in Lumbosacral DRE Category I: Complaints or Symptoms for the lumbar sprain/strain. Dr. A then stated that the claimant had a strain of the right shoulder area and assigned zero percent impairment. Dr. A assigned zero percent impairment for the claimant's right ankle and right knee. Dr. A stated the claimant had a closed head injury and assessed zero percent impairment. As previously mentioned, the parties stipulated that the claimant's compensable injury extends to a right elbow contusion. Dr. A did not consider or rate a right elbow contusion. Additionally, Dr. A did consider and rate a right shoulder strain, which has not yet been determined to be part of the compensable injury. Dr. A considered and rated a condition which has not yet been determined to be part of the compensable injury and failed to consider and rate a right elbow contusion, which the parties stipulated was a part of the compensable injury. Dr. A's certification does not consider and rate the compensable injury and cannot be adopted. Accordingly, we reverse the ALJ's determinations that the claimant reached MMI on January 24, 2022, and that the claimant's IR is five percent.

There is one other certification in evidence from (Dr. G), a referral doctor selected by the treating doctor. Dr. G examined the claimant on February 5, 2022, and certified that the claimant reached MMI on January 24, 2022, with a five percent IR. Dr. G considered and rated the following conditions: cervical intervertebral disc displacement without myelopathy and a thoracic sprain. Dr. G did not consider and rate a head contusion, lumbar sprain/strain, right knee contusion, right elbow contusion, or a right ankle contusion, all of which the parties have stipulated are part of the compensable injury. Further, Dr. G rated a thoracic sprain which has not yet been determined to be part of the compensable injury. Dr. G's certification cannot be adopted. There are no other certifications of MMI and IR in evidence. Consequently, we remand the issues of MMI and IR to the ALJ for further action consistent with this decision.

SUMMARY

We reverse the ALJ's determination that the claimant reached MMI on January 24, 2022, and we remand the MMI issue to the ALJ for further action consistent with this decision.

We reverse the ALJ's determination that the claimant's IR is five percent, and we remand the IR issue to the ALJ for further action consistent with this decision.

REMAND INSTRUCTIONS

Dr. A is the designated doctor in this case. On remand the ALJ is to determine whether Dr. A is still qualified and available to be the designated doctor. If Dr. A is no longer qualified or available to serve as the designated doctor, then another designated doctor is to be appointed to determine the claimant's MMI and IR.

The ALJ is to inform the designated doctor that the compensable injury of (date of injury), extends to a head contusion, cervical sprain/strain, lumbar sprain/strain, right knee contusion, right elbow contusion, right ankle contusion, a C5-6 3 mm broad based disc herniation, and a C6-7 3 mm broad based disc herniation. The ALJ is to inform the designated doctor that the date of statutory MMI is February 8, 2022. The ALJ is to request the designated doctor to give an opinion on the claimant's MMI, which can be no later than the statutory date, and rate the entire compensable injury in accordance with the AMA Guides considering the medical record and the certifying examination.

The parties are to be provided with the designated doctor's new certification and allowed an opportunity to respond. The ALJ is then to make a determination on MMI and IR consistent with this decision.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the ALJ, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Division, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See Appeals Panel Decision 060721, decided June 12, 2006.

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

**CORPORATION SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701-3218.**

Margaret L. Turner
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Carisa Space-Beam
Appeals Judge