

APPEAL NO. 221596
FILED NOVEMBER 22, 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), does not extend to left carpal tunnel syndrome (CTS) or left cubital tunnel syndrome (CuTS); (2) the appellant (claimant) reached maximum medical improvement (MMI) on May 18, 2021; (3) the claimant's impairment rating (IR) is 4%; (4) the claimant had disability resulting from the compensable injury of (date of injury), beginning on August 21, 2020, and continuing through October 16, 2020; and (5) the claimant did not have disability resulting from the compensable injury of (date of injury), beginning on October 17, 2020, and continuing through August 18, 2022. The claimant appealed that portion of the ALJ's disability determination that was against him, as well as the ALJ's determinations of extent of injury, MMI, and IR. The respondent (carrier) responded to the claimant's appeal, urging affirmance of the ALJ's determinations.

The ALJ's determination that the claimant had disability resulting from the compensable injury of (date of injury), beginning on August 21, 2020, and continuing through October 16, 2020, 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: (1) on (date of injury), the claimant sustained a compensable injury in the form of at least a left hand strain, left hand sprain, left wrist strain, and left wrist sprain; and (2) the Texas Department of Insurance, Division of Workers' Compensation (Division) appointed (Dr. C) as the designated doctor to determine the issues of extent of injury, MMI, IR, disability, and return to work. The claimant testified that he was injured on (date of injury), while transferring a patient for surgery. He stated that as he was pushing the patient in a hospital bed, the wheels on the bed locked and it would not turn. When he forced the bed to turn, he felt pain in his left palm. The claimant further testified that later the same day, he moved an oxygen tube on another patient's bed and felt more pain.

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), does not extend to left CTS or left CuTS is supported by sufficient evidence and is affirmed.

DISABILITY

The ALJ's determination that the claimant did not have disability resulting from the compensable injury of (date of injury), beginning on October 17, 2020, and continuing through August 18, 2022, is supported by sufficient evidence and is affirmed.

MMI

The ALJ's determination that the claimant reached MMI on May 18, 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 May 18, 2021, with a 4% IR in accordance with the July 28, 2022, certification of Dr. C, the designated doctor. Dr. C initially examined the claimant on May 31, 2022. Following a Presiding Officer's Directive to Order Designated Doctor Exam, Dr. C re-examined the claimant on July 27, 2022, and issued three alternative certifications. The first certification rated the compensable conditions of a left hand strain, left hand sprain, left wrist strain, and left wrist sprain and assigned the 4% 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). Dr. C assessed a 19% digit impairment for the left thumb based on range of motion (ROM) measurements which he converted to an 8% hand impairment and then to a 7% upper extremity (UE) impairment. Dr. C also assigned a 0% UE impairment for the claimant's left elbow, left wrist, and the remaining four fingers of the left hand due to significant voluntary restriction in the ROM for these body parts. Dr. C then combined the 7% impairment for the left thumb with 0% impairment for the left elbow and 0% impairment for the left wrist for a total 7% UE impairment which converted to a whole person impairment (WPI) of 4%.

There was a mistake in Dr. C's left thumb impairment calculation. In calculating the left thumb impairment, Dr. C used the following ROM measurements as indicated on the worksheet attached to his July 27, 2022, report: 40° of interphalangeal (IP) joint flexion (3%); 30° of IP joint extension (0%); 40° of metacarpophalangeal (MP) joint flexion (2%); 0° of MP joint extension (0%); 40° of carpometacarpal (CMC) joint radial abduction (1%); 2 cm of CMC adduction (8%); and 5 cm of CMC opposition (5%). Dr. C then added the joint impairments which resulted in a 19% digit impairment and converted that to an 8% hand impairment and 7% UE impairment. Dr. C stated that 2 cm of adduction resulted in 8% impairment, but Table 5 on page 3/28 of the AMA Guides indicates that 2 cm of adduction for the thumb results in 1% impairment. Adding the 1% impairment for adduction to the other left thumb joint impairments results in a 12% thumb impairment which converts to a 5% hand impairment and a 5% UE impairment, not a 7% UE impairment as determined by Dr. C. Combining 5% UE impairment for the left thumb and 0% UE impairment for the left elbow and wrist results in a 5% total UE impairment which converts to a WPI of 3%, not a 4% WPI as determined by Dr. C.

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; APD 101949, decided February 22, 2011; and APD 221440, decided October 6, 2022.

The ALJ found that the preponderance of the other medical evidence is not contrary to the certification of IR by Dr. C. After a mathematical correction, that finding is supported by the evidence. Accordingly, we reverse the ALJ's determination that the

claimant's IR is 4%, and we render a new decision that the claimant's IR is 3% as mathematically corrected.

SUMMARY

We affirm the ALJ's determination that the compensable injury of (date of injury), does not extend to left CTS or left CuTS.

We affirm the ALJ's determination that the claimant did not have disability resulting from the compensable injury of (date of injury), beginning on October 17, 2020, and continuing through August 18, 2022.

We affirm the ALJ's determination that the claimant reached MMI on May 18, 2021.

We reverse the ALJ's determination that the claimant's IR is 4%, and we render a new decision that the claimant's IR is 3% as mathematically corrected.

The true corporate name of the insurance carrier is **INDEMNITY INSURANCE COMPANY OF NORTH AMERICA** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
1999 BRYAN STREET, SUITE 900
DALLAS, TEXAS 75201.**

Cristina Beceiro
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge