

APPEAL NO. 221697
FILED DECEMBER 8, 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 7, 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 19, 2022; and (2) the claimant's impairment rating (IR) is three percent. The claimant appealed the ALJ's determinations of MMI, and IR. The respondent (self-insured) responded to the claimant's appeal, urging affirmance of the ALJ's determinations.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated, in part, that on (date of injury), the claimant sustained a compensable injury which consists of a cervical strain, right shoulder strain, lumbar strain, left knee strain, and right hip strain. The claimant, who worked at an automobile manufacturing company, testified that she was injured on (date of injury), while checking the safety of a car seat by physically manipulating it.

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).

MMI

The ALJ's determination that the claimant reached MMI on January 19, 2022, 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 reached MMI on January 19, 2022, with a three percent IR in accordance with the certification of (Dr. S), the carrier-selected required medical examination doctor. Dr. S examined the claimant on May 28, 2022, and assigned the three percent IR based on the compensable conditions of a cervical strain, right shoulder strain, lumbar strain, left knee strain, and right hip 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. S assessed three percent impairment based on range of motion (ROM) deficits in the right shoulder. Dr. S additionally assigned zero percent impairment for the cervical spine, lumbar spine, left knee, and right hip.

There was a mistake in Dr. S's right shoulder impairment calculation. Dr. S assigned impairment based on the following right shoulder measurements: flexion 130°; extension 60°; abduction 120°; adduction 60°; internal rotation 80°; and external rotation 80°. Dr. S stated in his narrative report that the right shoulder ROM values tallied to a five percent upper extremity (UE) impairment, which he then converted to a three percent whole person impairment (WPI). According to Figures 38, 41, and 44 on pages 3/43, 3/44, and 3/45, respectively, of the AMA Guides, the claimant's right shoulder ROM measurements of extension, adduction, internal rotation and external rotation result in zero percent impairment. Additionally, 130° of flexion results in three percent UE impairment and 120° of abduction results in three percent UE impairment, which results in a six percent total UE impairment, instead of a five percent UE impairment. A six percent UE impairment converts to a four percent WPI, not a three percent WPI as certified by Dr. S.

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 Dr. S. After a mathematical correction, that finding is supported by the evidence. Accordingly, we reverse the ALJ's determination that the claimant's IR is three percent, and we render a new decision that the claimant's IR is four percent, as mathematically corrected.

SUMMARY

We affirm the ALJ's determination that the claimant reached MMI on January 19, 2022.

We reverse the ALJ's determination that the claimant's IR is three percent, and we render a new decision that the claimant's IR is four percent, as mathematically corrected.

The true corporate name of the insurance carrier is **(a certified self-insured)**
and the name and address of its registered agent for service of process is

(NAME)
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

Cristina Beceiro
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge