

APPEAL NO. 221773
FILED DECEMBER 21, 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 29, 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 wrist Capitate cyst, left wrist Triquetrum cyst, bilateral ulnar neuropathy, bilateral sensory neuropathy, L4 disc herniation, L5 disc herniation, C3-4 central disc extrusion, C4-5 central disc extrusion, C7-T1 central disc extrusion, left shoulder severe arthritis to the acromioclavicular joint, concussion with loss of consciousness, cognitive impairment, left cubital tunnel syndrome (CuTS), or left carpal tunnel syndrome (CTS); (2) the appellant (claimant) reached maximum medical improvement (MMI) on February 3, 2022; and (3) the claimant's impairment rating (IR) is 14%. The claimant appealed, disputing the ALJ's determinations. The respondent (carrier) responded, urging affirmance of the disputed determinations.

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), in the form of at least a head contusion without loss of consciousness, C6-7 left foraminal disc extrusion, left shoulder full thickness supraspinatus tear, left wrist sprain/strain, lumbar sprain/strain Grade 1, and thoracic sprain/strain Grade 1. The claimant was injured on (date of injury), while he was driving a street sweeper and was rear-ended by an 18-wheeler carrying two trailers.

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 wrist Capitate cyst, left wrist Triquetrum cyst, bilateral ulnar neuropathy,

bilateral sensory neuropathy, L4 disc herniation, L5 disc herniation, C3-4 central disc extrusion, C4-5 central disc extrusion, C7-T1 central disc extrusion, left shoulder severe arthritis to the acromioclavicular joint, concussion with loss of consciousness, cognitive impairment, left CuTS, or left CTS is supported by sufficient evidence and is affirmed.

MMI

The ALJ's determination that the claimant reached MMI on February 3, 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 found that the certification from (Dr. B), the post-designated doctor required medical examination doctor, is supported by the preponderance of the evidence. The ALJ therefore determined the claimant reached MMI on February 3, 2022, with a 14% IR.

Dr. B examined the claimant on June 21, 2022, and issued three certifications on July 13, 2022, based on various conditions. Only one of these certifications considers the compensable injury in this case, which is a head contusion without loss of consciousness, C6-7 left foraminal disc extrusion, left shoulder full thickness supraspinatus tear, left wrist sprain/strain, lumbar sprain/strain Grade 1, and thoracic sprain/strain Grade 1. 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. B assigned 0% impairment for the head contusion without loss of consciousness. Dr. B also placed the claimant in Diagnosis-Related Estimate (DRE) Cervicothoracic Category II: Minor Impairment for 5% impairment for the cervical spine, DRE Thoracolumbar Category I: Complaints or Symptoms for 0% impairment for the thoracic spine, and DRE Lumbosacral Category I: Complaints or Symptoms for 0% impairment for the lumbar spine. Dr. B further assigned 15% upper extremity (UE) impairment based on

range of motion deficits and a distal clavicle resection of the left shoulder, and 0% UE impairment for the left wrist and elbow. Dr. B converted 15% UE impairment to 9% whole person impairment (WPI), then combined 9% WPI with 5% WPI for the cervical spine for a total IR of 14%.

However, Dr. B's assigned impairment for the left shoulder contains an error. Dr. B correctly assigned 2% UE impairment for 150° of flexion, 0% impairment for 50° of extension, 4% impairment for 100° of abduction, 0% impairment for 40° of adduction, and 0% impairment for 85° of internal rotation. Dr. B also assigned 0% impairment for 50° of external rotation. Figure 44 on page 3/45 of the AMA Guides provides that 50° of external rotation results in 1% impairment, not 0% impairment as assigned by Dr. B. Adding the correct UE impairments for the left shoulder results in 7% UE impairment, not 6% UE impairment as assigned by Dr. B. Combining 7% UE impairment with 10% UE impairment for the distal clavicle resection results in 16% UE impairment, not 15% UE impairment as assigned by Dr. B. Table 3 on page 3/20 of the AMA Guides provides that 16% UE impairment converts to 10% WPI, not 9% WPI as assigned by Dr. B. 10% WPI for the left shoulder combined with 5% WPI for the cervical spine, 0% WPI for the thoracic spine, 0% WPI for the lumbar spine, 0% WPI for the head, and 0% WPI for the left wrist and elbow results in a total IR of 15%, not 14% as assigned by Dr. B.

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 Dr. B's IR is supported by the preponderance of the evidence. After a mathematical correction, that finding is supported by the evidence. Accordingly, we reverse the ALJ's determination that the claimant's IR is 14%, and we render a new decision that the claimant's IR is 15% as mathematically corrected.

SUMMARY

We affirm the ALJ's determination that the compensable injury of (date of injury), does not extend to left wrist Capitate cyst, left wrist Triquetrum cyst, bilateral ulnar neuropathy, bilateral sensory neuropathy, L4 disc herniation, L5 disc herniation, C3-C4 central disc extrusion, C4-C5 central disc extrusion, C7-T1 central disc extrusion, left

shoulder severe arthritis to the acromioclavicular joint, concussion with loss of consciousness, cognitive impairment, left CuTS, or left CTS.

We affirm the ALJ's determination that the claimant reached MMI on February 3, 2022.

We reverse the ALJ's determination that the claimant's IR is 14%, and we render a new decision that the claimant's IR is 15% as mathematically corrected.

The true corporate name of the insurance carrier is **ACIG 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.**

Carisa Space-Beam
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Margaret L. Turner
Appeals Judge