

APPEAL NO. 221943
FILED FEBRUARY 3, 2023

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 November 8, 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 anxiety, post-traumatic stress disorder (PTSD), C6-7 disc protrusion, or C7 radiculopathy; (2) the appellant (claimant) reached maximum medical improvement (MMI) on February 4, 2022; and (3) the claimant's impairment rating (IR) is two percent. The claimant appealed, disputing the ALJ's determinations of extent of injury, MMI, and IR. The respondent (carrier) responded, urging affirmance of the disputed extent of injury, MMI, and IR determinations.

DECISION

Affirmed in part and reversed and remanded 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 cervical sprain/strain and a left shoulder sprain/strain; the Texas Department of Insurance, Division of Workers' Compensation (Division) appointed (Dr. G) as designated doctor for the issues of MMI and IR; and the Division appointed (Dr. M) as designated doctor for the issue of extent of injury. The claimant testified she was injured by a patient who became combative when she was trying to replace a mask oxygen delivery system on the patient.

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 anxiety, PTSD, C6-7 disc protrusion, or C7 radiculopathy 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. G, that the claimant reached MMI on February 4, 2022, with a two 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. G’s narrative report states that he examined the claimant on February 4, 2022, and considered the following conditions: cervical strain and left shoulder strain. Dr. C assessed zero percent impairment for the claimant’s cervical spine. Dr. G assessed two percent IR for the claimant’s left shoulder strain for loss of range of motion. As previously noted, the parties stipulated that the compensable injury includes a cervical sprain and a left shoulder sprain. Dr. G failed to consider and rate a cervical sprain and a left shoulder sprain, which the parties stipulated were a part of the compensable injury. Dr. G’s certification cannot be adopted because it does not rate the entire compensable injury. See Appeals Panel Decision (APD) 221745, decided January 12, 2023. Accordingly, we reverse the ALJ’s determinations that the claimant reached MMI on February 4, 2022, and that the claimant’s IR is two percent.

There are no other MMI/IR certifications in evidence. As there is no MMI/IR certification in evidence that can be adopted, we remand the issues of MMI and IR to the ALJ for further action consistent with this decision.

SUMMARY

We affirm the ALJ's determination that the compensable injury of (date of injury), does not extend to anxiety, PTSD, C6-7 disc protrusion, or C7 radiculopathy.

We reverse the ALJ's determination that the claimant reached MMI on February 4, 2022, and remand the issue of MMI to the ALJ for further action consistent with this decision.

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

REMAND INSTRUCTIONS

Dr. G is the designated doctor in this case. The ALJ is to determine whether Dr. G is still qualified and available to be the designated doctor. If Dr. G 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 cervical sprain/strain and a left shoulder sprain/strain but does not extend to anxiety, PTSD, C6-7 disc protrusion, or C7 radiculopathy. The ALJ is to request the designated doctor to give an opinion on the claimant's MMI 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 MMI/IR certification and are to be 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 APD 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **NEW HAMPSHIRE 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