

APPEAL NO. 230029
FILED FEBRUARY 23, 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 October 6, 2022, with the record closing on November 30, 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 (date of injury), compensable injury does not extend to right-sided peroneal motor neuropathy, right-sided sural sensory, right-sided saphenous sensory neuropathy, right-sided tarsal tunnel syndrome, or right complex regional pain syndrome (CRPS); (2) the appellant (claimant) reached maximum medical improvement (MMI) on February 8, 2021; and (3) the claimant's impairment rating (IR) is five percent. The claimant appealed the ALJ's determinations. The respondent (carrier) responded, urging affirmance of the ALJ's determinations.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated, in part, that the Texas Department of Insurance, Division of Workers' Compensation (Division) appointed (Dr. D) as the designated doctor to address the issues of MMI, IR, and extent of injury; the date of statutory MMI is September 13, 2021; and the carrier has accepted a (date of injury), compensable injury in the nature of bilateral knee/ankle contusions, right ankle sprain/ligament tear, a right ankle avulsion fracture, and sensory deficits in the superficial peroneal nerve. The claimant testified she was injured on (date of injury), when she stepped on uneven concrete while walking to her car and rolled both of her ankles.

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 (date of injury), compensable injury does not extend to right-sided peroneal motor neuropathy, right-sided sural sensory, right-sided

saphenous sensory neuropathy, right-sided tarsal tunnel syndrome, or right CRPS is supported by sufficient evidence and is affirmed.

MMI

The ALJ's determination that the claimant reached MMI on February 8, 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 found that the February 8, 2021, date of MMI and five percent IR certified by Dr. D is not contrary to the preponderance of the other medical evidence, and therefore determined the claimant reached MMI on February 8, 2021, with a five percent IR. Dr. D examined the claimant on June 30, 2022, and issued alternate certifications based on various conditions. In his narrative report Dr. D noted that his third certification, which certified a February 8, 2021, date of MMI and five percent IR, considered bilateral knee/ankle contusions, a right ankle sprain/ligament tear, a right ankle avulsion fracture, and sensory deficits in the superficial peroneal nerve, which is the compensable injury in this case.

Dr. D explains in his narrative report that he used the findings from (Dr. T) on February 8, 2021, to calculate the IR, and Dr. D assessed the following impairments for the right ankle/foot: zero percent impairment for 25° of plantar flexion; one percent impairment for 7° of dorsiflexion; one percent impairment for 7° of eversion; and one percent impairment for 15° of inversion. Dr. D further assigned two percent impairment for sensory loss of the superficial peroneal nerve. Dr. D also assigned zero percent impairment for bilateral knee/ankle contusions. Dr. D combined these impairments for a total of five percent whole person impairment (WPI). However, there was a mistake in Dr. D's impairment calculation. Table 42, Ankle Motion Impairments, on page 3/78 of 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) provides that 7° of dorsiflexion results

in three percent WPI, not one percent WPI as assigned by Dr. D. Combining zero percent impairment for plantar flexion, three percent impairment for dorsiflexion, one percent impairment for eversion, one percent impairment for inversion, two percent for sensory loss of the superficial peroneal nerve, and zero percent impairment for the bilateral knee/ankle contusions results in a seven percent WPI, not five percent WPI.

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

SUMMARY

We affirm the ALJ's determination that the (date of injury), compensable injury does not extend to right-sided peroneal motor neuropathy, right-sided sural sensory, right-sided saphenous sensory neuropathy, right-sided tarsal tunnel syndrome, or right CRPS.

We affirm the ALJ's determination that the claimant reached MMI on February 8, 2021.

We reverse the ALJ's determination that the claimant's IR is five percent, and we render a new decision the claimant's IR is seven percent, 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 75201-3136.**

Carisa Space-Beam
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Margaret L. Turner
Appeals Judge