

APPEAL NO. 230096
FILED MARCH 9, 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 December 14, 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 left knee valgus deformity, right knee medial meniscus tear, right knee arthritis, or left rotator cuff partial thickness tear; (2) the appellant (claimant) reached maximum medical improvement (MMI) on April 19, 2022; and (3) the claimant's impairment rating (IR) is zero percent. The claimant appealed, disputing the ALJ's determinations of extent of injury, MMI, and IR. The respondent (self-insured) responded, urging affirmance of the extent of injury, MMI, and IR determinations.

DECISION

Affirmed in part, reformed in part, and reversed and remanded in part.

The parties stipulated, in part, that on (date of injury), the claimant sustained a compensable injury at least in the form of a left knee contusion, right knee contusion, and a right thumb sprain; and the Texas Department of Insurance, Division of Workers' Compensation (Division) appointed (Dr. M) as designated doctor for purposes of MMI and IR. The claimant was injured while working as a registered nurse on (date of injury) when her foot got tangled in some wires and she fell onto her hands and knees. We note that the ALJ mistakenly wrote left "knee" rotator cuff partial thickness tear in Conclusion of Law No. 3 and the Decision sections of her decision. We reform those sections to state "left rotator cuff partial thickness tear" to conform to the issue.

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 sustained on (date of injury), does not extend to left knee valgus deformity, right knee medial meniscus tear,

right knee arthritis, or left rotator cuff partial thickness tear 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 certification from Dr. M, the designated doctor appointed by the Division, was not contrary to the preponderance of the other medical evidence. Dr. M examined the claimant on April 19, 2022, and certified that the claimant reached MMI on that date with a zero 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). Dr. M stated in his narrative report that “[u]pon review of all records received, exam and the fact that the compensable injury is accepted as left knee contusion, right knee contusion, and left thumb sprain, it is my professional opinion that [MMI] was reached on [April 19, 2022].” Dr. M assessed zero percent impairment for the left knee and zero percent impairment for the right knee. Dr. M then assessed a one percent thumb impairment for the left thumb which he converted to a zero percent hand impairment, zero percent upper extremity impairment, and then zero percent whole person impairment. Dr. M rated a left thumb sprain, instead of a right thumb sprain as stipulated by the parties. A left thumb sprain has not yet been determined to be part of the compensable injury. Further, Dr. M did not rate a right thumb sprain, which has been accepted as part of the compensable injury. Accordingly, the ALJ’s

determination that the claimant reached MMI on April 19, 2022, with a zero percent IR is reversed.

There is no other certification in evidence. Accordingly, we remand the issues of MMI and IR to the ALJ for further action consistent with this decision.

SUMMARY

We reform Conclusion of Law No. 3 and the Decision sections to state “left rotator cuff partial thickness tear” instead of “left knee rotator cuff partial thickness tear.”

We affirm the ALJ’s determination that the compensable injury sustained on (date of injury), does not extend to left knee valgus deformity, right knee medial meniscus tear, right knee arthritis, or left rotator cuff partial thickness tear.

We reverse the ALJ’s determination that the claimant reached MMI on April 19, 2022, and remand the MMI issue to the ALJ for further action consistent with this decision.

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

REMAND INSTRUCTIONS

Dr. M is the designated doctor in this case. The ALJ is to determine whether Dr. M is still qualified and available to serve as designated doctor. If Dr. M is no longer qualified or available, then another designated doctor is to be appointed.

The ALJ is to request that the designated doctor give an opinion on the claimant’s date of MMI and rate the entire compensable injury, which includes a left knee contusion, right knee contusion, and a right thumb sprain in accordance with the AMA Guides considering the medical record and the certifying examination. The ALJ is to inform the designated doctor that the compensable injury of (date of injury), does not extend to left knee valgus deformity, right knee medial meniscus tear, right knee arthritis, or left rotator cuff partial thickness tear.

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 Appeals Panel Decision 060721, decided June 12, 2006.

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

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

Cristina Beceiro
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge