

APPEAL NO. 230105
FILED MARCH 16, 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 (CCH) was held on November 16, 2022, with the record closing on December 6, 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), extends to left peripheral disorder but does not extend to left wrist chronic non-union of the scaphoid; (2) the appellant (claimant) reached maximum medical improvement (MMI) on May 4, 2021; and (3) the claimant's impairment rating (IR) is 13%. The claimant appealed, disputing that portion of the ALJ's extent-of-injury determination that was against her, as well as the ALJ's determinations regarding MMI and IR. The respondent (carrier) responded, urging affirmance of the appealed extent of injury, MMI, and IR determinations.

The ALJ's determination that the compensable injury of (date of injury), extends to left peripheral disorder was not appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed in part and reversed and remanded in part.

The parties stipulated, in part, that on (date of injury), the claimant sustained a compensable injury in the form of a left wrist sprain, left wrist rupture in the scapholunate ligament, post-traumatic osteoarthritis, right shoulder strain, contusion to the right knee, and a strain to the right ankle; the Texas Department of Insurance, Division of Workers' Compensation (Division) initially appointed (Dr. D) as designated doctor to determine MMI and IR; the Division subsequently appointed (Dr. P) as designated doctor to determine MMI, IR, and extent of injury; and the date of statutory MMI was January 27, 2022. The claimant was injured while working as an infant teacher on (date of injury), when she slipped and fell backwards, landing on her left hand and then her right hand and knee.

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 wrist chronic non-union of the scaphoid 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 amended certification from Dr. P, the subsequent designated doctor appointed by the Division, was not contrary to the preponderance of the other medical evidence. Dr. P examined the claimant on May 24, 2022, and in response to a letter of clarification from the ALJ, certified on November 21, 2022, that the claimant reached MMI on May 4, 2021 with 13% 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. P stated in his narrative report dated November 21, 2022, that the injuries and conditions determined to be compensable at the CCH on November 16, 2022, were a left wrist sprain, left wrist scapholunate ligament rupture, left wrist post-traumatic arthritis, right shoulder strain, right knee strain, right ankle strain, and peripheral nerve disorder. Dr. P assessed 5% upper extremity (UE) impairment based on range of motion (ROM) deficits in the left wrist, 12% UE

impairment for a resection arthroplasty of the proximal row of carpal bones as indicated in Table 27 on page 3/61 of the AMA Guides, and a 6% UE impairment for mild post-traumatic arthritis as indicated in Table 26 on page 3/61 of the AMA Guides. Dr. P combined the left UE impairments, which resulted in a total 21% UE impairment, and converted that to a 13% whole person impairment. However, Dr. P rated post-traumatic arthritis, instead of post-traumatic osteoarthritis, as stipulated by the parties. Additionally, he rated a right knee strain, instead of a right knee contusion. A right knee strain has not yet been determined to be part of the compensable injury. Further, Dr. P did not rate a right knee contusion or post-traumatic osteoarthritis, which have been accepted as part of the compensable injury. Accordingly, the ALJ's determination that the claimant reached MMI on May 4, 2021, with a 13% IR is reversed.

There are three other certifications in evidence. (Dr. H), a treating doctor referral, examined the claimant on July 26, 2021, and certified that the claimant reached MMI on May 4, 2021, with a 26% IR. Dr. H considered and rated a left wrist sprain, right shoulder strain, right knee contusion, right ankle strain, left wrist scapholunate ligament rupture, post-traumatic osteoarthritis of the left wrist, and left peripheral disorder. We note that although Dr. H did not list the peripheral disorder as a separate diagnosis, he did consider and rate it. In the Discussion section of her decision, the ALJ stated that the certification of Dr. H could not be adopted because his ROM measurements were not consistent with those of other providers, which was not in accordance with the AMA Guides. This is supported by sufficient evidence. Therefore, Dr. H's certification cannot be adopted.

Dr. D, the initial designated doctor, examined the claimant on September 9, 2021, and certified that the claimant reached MMI on May 4, 2021, with a 13% IR. Dr. D considered and rated a left wrist sprain, right shoulder strain, right knee contusion, right ankle strain, left wrist scapholunate ligament rupture, and post-traumatic osteoarthritis of the left wrist. Dr. D did not rate left peripheral disorder, which was determined to be part of the compensable injury. Dr. D's certification cannot be adopted.

In his initial certification dated June 10, 2022, Dr. P also certified that the claimant reached MMI on May 4, 2021, with a 13% IR. In this certification, Dr. P considered and rated a left wrist sprain, left wrist scapholunate ligament rupture, post-traumatic arthritis, right shoulder strain, right knee strain, right ankle strain, non-union of the scaphoid, and peripheral nerve disorder. Dr. P rated a right knee strain instead of a right knee contusion, as well as post-traumatic arthritis instead of post-traumatic osteoarthritis. Additionally, he rated non-union of the scaphoid, which we have affirmed is not part of the compensable injury. Therefore, Dr. P's initial certification cannot be adopted.

There is no certification in evidence that can be adopted. Accordingly, 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 sustained on (date of injury), does not extend to left wrist chronic non-union of the scaphoid.

We reverse the ALJ's determination that the claimant reached MMI on May 4, 2021, 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 13% and remand the IR issue to the ALJ for further action consistent with this decision.

REMAND INSTRUCTIONS

Dr. P is the designated doctor in this case. The ALJ is to determine whether Dr. P is still qualified and available to serve as designated doctor. If Dr. P 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, which cannot be past the statutory MMI date of January 27, 2022, and rate the entire compensable injury, which is a left wrist sprain, left wrist rupture in the scapholunate ligament, post-traumatic osteoarthritis, right shoulder strain, contusion to the right knee, a strain to the right ankle, and left peripheral disorder 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 wrist chronic non-union of the scaphoid.

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 **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**RICHARD J. GERGASKO, PRESIDENT
2200 ALDRICH STREET
AUSTIN, TEXAS 78723.**

Cristina Beceiro
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge