

APPEAL NO. 230204  
FILED MARCH 30, 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 December 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), extends to a cervical sprain and a left shoulder sprain; (2) the compensable injury of (date of injury), does not extend to post-concussion syndrome, post-traumatic headache, spasms of the cervical region, herniation at C5-6, or cervical spondylosis; (3) the appellant (claimant) reached maximum medical improvement (MMI) on August 22, 2019; and (4) the claimant's impairment rating (IR) is 6%. The claimant appealed, disputing the ALJ's determinations of extent of injury that were adverse to her, as well as the ALJ's MMI and IR determinations. The respondent (carrier) responded, urging affirmance of the ALJ's determinations. The ALJ's determination that the compensable injury extends to a cervical sprain and a left shoulder sprain was not appealed and has become final pursuant to Section 410.169. We note a cervical sprain was not an issue before the ALJ; however, the parties stipulated at the CCH that the compensable injury extends to a cervical sprain.

DECISION

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

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury), that extends to at least a cervical sprain; for purposes of the CCH the terms sprain and strain mean the same thing; and the statutory date of MMI in this case is August 30, 2021. We note that the stipulations contained in Finding of Fact No. 1 contain errors. Specifically, Finding of Fact No. 1.D. incorrectly identifies the compensable injury as a cervical strain rather than sprain. Additionally, the decision and order does not include the parties' stipulations that for purposes of the CCH the terms sprain and strain mean the same thing; the statutory date of MMI is August 30, 2021; and the Texas Department of Insurance, Division of Workers' Compensation (Division) appointed (Dr. S) on November 4, 2021, as designated doctor on the issues of extent of injury, MMI, and IR. We reform the decision and order to state the parties stipulated the following: the claimant sustained a compensable injury on (date of injury), that extends to at least a cervical sprain; for purposes of the CCH the terms sprain and strain mean the same thing; the statutory date of MMI is August 30, 2021; and the Division appointed Dr. S on November 4, 2021, as designated doctor on the issues of extent of injury, MMI, and IR.

The claimant was injured on (date of injury), while performing duties as a dishwasher for the employer. The claimant was washing dishes when plastic bins fell from a shelf above her fell onto her head and neck.

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 post-concussion syndrome, post-traumatic headache, spasms of the cervical region, herniation at C5-6, or cervical spondylosis 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 determined the claimant reached MMI on August 22, 2019, with a 6% IR as certified by (Dr. Sg), the post-designated doctor required medical examination

doctor. Dr. Sg examined the claimant on January 26, 2022. In his attached narrative report Dr. Sg notes the conditions he considered and rated included, among others, post-concussive syndrome, post-traumatic headache, and exacerbation of cervical spondylosis, which are conditions that have been determined to be not part of the compensable injury. Accordingly, we reverse the ALJ's determinations that the claimant reached MMI on August 22, 2019, with a 6% IR.

The other certifications in evidence are from Dr. S, the designated doctor. Dr. S initially examined the claimant on January 6, 2021, and certified the claimant had not reached MMI considering, in part, post-concussion syndrome, post-traumatic headache, cervical region spasms, and exacerbation/aggravation of cervical spondylosis. The ALJ's determination that the compensable injury does not extend to those conditions has been affirmed. Additionally, the parties stipulated that the statutory date of MMI is August 30, 2021; therefore, this certification cannot be adopted.

Dr. S also examined the claimant on October 6, 2021, and certified the claimant reached MMI on August 30, 2021, with a 16% IR, considering, in part, post-concussion syndrome, post-traumatic headache, spasms of the cervical region, and exacerbation/aggravation of the cervical spondylosis. Dr. S again examined the claimant on December 1, 2022, and issued three alternate certifications dated December 8, 2022. In the first two certifications Dr. S certified the claimant reached MMI on August 30, 2021, with a 16% IR. One considered and rated, among other things, post-concussive syndrome and post-traumatic headache. The second considered and rated, among other things, a herniation at C5-6 and cervical spondylosis. We have affirmed the ALJ's determination that the compensable injury does not extend to these conditions. The ALJ found that Dr. S's certifications that the claimant reached MMI on August 30, 2021, with a 16% IR are contrary to the preponderance of the other medical evidence; this finding is supported by sufficient evidence.

In his third certification dated December 8, 2022, Dr. S certified the claimant reached MMI on May 2, 2019, with a 5% IR considering only a cervical sprain. However, the injury in this case is a cervical sprain and a left shoulder sprain. Dr. S's third certification does not consider and rate the entire compensable injury and as such cannot be adopted.

There is no other certification in evidence that can be adopted. We therefore 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 post-concussion syndrome, post-traumatic headache, spasms of the cervical region, herniation at C5-6, or cervical spondylosis.

We reform the decision and order to state the parties stipulated the following: the claimant sustained a compensable injury on (date of injury), that extends to at least a cervical sprain; for purposes of the CCH the terms sprain and strain mean the same thing; the statutory date of MMI is August 30, 2021; and the Division appointed Dr. S on November 4, 2021, as designated doctor on the issues of extent of injury, MMI, and IR.

We reverse the ALJ's determination that the claimant reached MMI on August 22, 2019, and we 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 6%, and we remand the IR issue to the ALJ for further action consistent with this decision.

### **REMAND INSTRUCTIONS**

Dr S is the designated doctor in this case. On remand, the ALJ is to determine whether Dr. S is still qualified and available to be the designated doctor. If Dr. S is no longer qualified or is not available to serve as the designated doctor, then another designated doctor is to be appointed to determine the claimant's MMI and IR for the (date of injury), compensable injury. The ALJ is to inform the designated doctor that the (date of injury), compensable injury extends to a cervical sprain and a left shoulder sprain, but does not extend to post-concussion syndrome, post-traumatic headache, spasms of the cervical region, herniation at C5-6, or cervical spondylosis. The ALJ is also to inform the designated doctor that the statutory date of MMI in this case is August 30, 2021. The ALJ is to request the designated doctor to give an opinion on the claimant's date of MMI, which cannot be after the statutory date of August 30, 2021, and rate the entire compensable injury in accordance with 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) considering the medical record and the certifying examination.

The parties are to be provided the correspondence to the designated doctor, the designated doctor's response, and are to be allowed an opportunity to respond. The ALJ is then to make determinations on MMI, which cannot be after August 30, 2021, the statutory date of 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 **AMGUARD INSURANCE COMPANY** 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.**

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Carisa Space-Beam  
Appeals Judge

CONCUR:

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Cristina Beceiro  
Appeals Judge

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Margaret L. Turner  
Appeals Judge