

APPEAL NO. 230224
FILED MARCH 31, 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 January 9, 2023, 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), does not extend to an L3-4 disc herniation, a T11-12 disc protrusion, or disc bulges at L4-5 or L5-S1; (2) the appellant (claimant) reached maximum medical improvement (MMI) on February 15, 2022; (3) the claimant's impairment rating (IR) is five percent; and (4) the claimant had disability resulting from the compensable injury of (date of injury), from March 1, 2022, through April 19, 2022, but did not have disability from November 28, 2021, through February 28, 2022, or from April 20, 2022, through the date of the CCH. The claimant appealed, disputing the ALJ's determinations of extent of injury, MMI, IR, and that portion of the ALJ's disability determination that was unfavorable to her. The respondent (carrier) responded, urging affirmance of the disputed extent of injury, MMI, IR, and disability determinations. The ALJ's determination that the claimant had disability resulting from the compensable injury of (date of injury), from March 1, 2022, through April 19, 2022, was not appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed in part as reformed.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury); the carrier has accepted a lumbar strain as the compensable injury; and the Texas Department of Insurance, Division of Workers' Compensation (Division) appointed (Dr. X) as designated doctor to address the issues of extent of injury, MMI, and IR. We note that the record reflects that the parties also stipulated that Dr. X was appointed to address the issue of disability. The claimant testified that she sustained a compensable injury on (date of injury), while moving a patient from a CT scan table onto a bed.

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 an L3-4 disc herniation, a T11-12 disc protrusion, or disc bulges at L4-5 or L5-S1 is supported by sufficient evidence and is affirmed.

DISABILITY

The ALJ's determination that the claimant did not have disability from November 28, 2021, through February 28, 2022, or from April 20, 2022, through the date of the CCH is supported by sufficient evidence and is affirmed. We note that on January 27, 2023, the Division issued an Order Correcting Clerical Error regarding the dates of disability in portions of the ALJ's Decision.

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 is contrary to the certification from the designated doctor, Dr. X, that the claimant reached MMI on May 27, 2022, with a five percent IR. That finding is supported by sufficient evidence.

The only other doctor who provided a certification for the compensable injury in evidence was the carrier-selected required medical examination (RME) doctor, (Dr. K). Dr. K examined the claimant on August 30, 2022. In the certification that considered

and rated the lumbar strain, Dr. K certified that the claimant reached MMI on February 15, 2022, with a five 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. K placed the claimant in Lumbosacral Diagnosis-Related Estimate Category II: Minor Impairment.

In her discussion of the evidence, the ALJ stated that the preponderance of the medical evidence supports Dr. K's certification that the claimant reached MMI on February 15, 2022, with a five percent IR. In Finding of Fact No. 5, the ALJ found that "Dr. [K], the [RME] doctor, certified that the claimant reached [MMI] on February 15, 2022; the preponderance of the evidence supports this certification." This finding is supported by sufficient evidence. The ALJ determined that the claimant reached MMI on February 15, 2022, and that the claimant's IR is five percent. However, the ALJ inadvertently left out the IR assigned by Dr. K in her Finding of Fact No. 5. We affirm the ALJ's determination that the claimant reached MMI on February 15, 2022. We reform Finding of Fact No. 5 to include the IR of five percent assigned by Dr. K for the claimant's compensable injury, a lumbar strain. We affirm the ALJ's determination that the claimant's IR is five percent.

SUMMARY

We affirm the ALJ's determination that the compensable injury of (date of injury), does not extend to an L3-4 disc herniation, a T11-12 disc protrusion, or disc bulges at L4-5 or L5-S1.

We affirm the ALJ's determination that the claimant did not have disability from November 28, 2021, through February 28, 2022, or from April 20, 2022, through the date of the CCH.

We affirm the ALJ's determination that the claimant reached MMI on February 15, 2022.

We reform Finding of Fact No. 5 to include the IR of five percent assigned by Dr. K for the claimant's compensable injury, a lumbar strain. We affirm the ALJ's determination that the claimant's IR is five percent.

The true corporate name of the insurance carrier is **SAFETY NATIONAL CASUALTY CORPORATION** 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.**

Margaret L. Turner
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Carisa Space-Beam
Appeals Judge