

APPEAL NO. 230237
FILED APRIL 6, 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 9, 2022, with the record closing on January 11, 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), extends to polyarticular osteoarthritis of the right wrist; (2) the compensable injury of (date of injury), does not extend to a crushing injury to the right forearm, other articular cartilage disorder of the right wrist, carpal tunnel syndrome (CTS) of the right wrist, or chronic tendinitis of the right wrist; (3) the appellant/cross-respondent (claimant) reached maximum medical improvement (MMI) on March 30, 2022; and (4) the claimant's impairment rating (IR) is 8%. The claimant appealed, disputing that portion of the ALJ's extent-of-injury determination that was unfavorable to her. The respondent/cross-appellant (carrier) responded, urging affirmance of the extent-of-injury determination disputed by the claimant. The carrier cross-appealed, disputing the ALJ's determinations of MMI and IR, as well as the ALJ's determination that the compensable injury extends to polyarticular osteoarthritis of the right wrist. The claimant responded, urging affirmance of the appealed extent of injury, MMI, and IR determinations.

DECISION

Affirmed in part and reversed and remanded in part.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury); the compensable injury extends to a crushing injury to the right wrist, a crushing injury to the right hand, and a right wrist triangular fibrocartilage complex (TFCC) tear; the Texas Department of Insurance, Division of Workers' Compensation (Division) appointed (Dr. L) as the designated doctor on the issues of MMI and IR; and the claimant's date of statutory MMI is June 22, 2022. The claimant was injured on (date of injury), when a piece of a machine fell on her right hand and wrist.

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), extends to polyarticular osteoarthritis of the right wrist is supported by sufficient evidence and is affirmed.

The ALJ's determination that the compensable injury sustained on (date of injury), does not extend to a crushing injury to the right forearm, other articular cartilage disorder of the right wrist, CTS of the right wrist, or chronic tendinitis of the right wrist 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 subsequent designated doctor appointed by the Division, was not contrary to the preponderance of the other medical evidence. Dr. M examined the claimant on December 28, 2022, and certified on December 28, 2022, that the claimant reached MMI on March 30, 2022, with an 8% 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 dated December 28, 2022, that the injuries and conditions considered and rated were a crushing injury to the right hand, a crushing injury to the right wrist, a right wrist TFCC tear, and polyarthrits of the right wrist. The conditions considered by Dr. M were stated in a Presiding Officer's Directive to Order Designated Doctor Exam (POD) dated

November 15, 2022. The ALJ mistakenly noted the condition of polyarthritis of the right wrist rather than polyarticular osteoarthritis of the right wrist as determined at the CCH. Dr. M assessed 0% impairment based on range of motion (ROM) deficits in the right wrist and 14% upper extremity (UE) impairment for ROM deficits in the fingers and thumb. Dr. M then converted the 14% UE impairment assessed to an 8% whole person impairment. We note that based on Table 3, page 3/20 of the AMA Guides, 14% hand impairment actually converts to 13% UE impairment. Both 13% UE impairment and 14% UE impairment convert to 8% whole person impairment. However, Dr. M rated polyarthritis of the right wrist, instead of polyarticular osteoarthritis, as determined by the ALJ. Accordingly, the ALJ's determination that the claimant reached MMI on March 30, 2022, with an 8% IR is reversed.

There are two other certifications in evidence. Dr. L, the initial designated doctor, examined the claimant on March 1, 2022, and certified that the claimant reached MMI on January 6, 2022, with a 4% IR. Dr. L considered and rated a crushing injury to the right wrist and hand, a right wrist TFCC tear, and CTS of the right wrist. The ALJ determined that the compensable injury did not extend to CTS of the right wrist and that determination was affirmed. Additionally, the ALJ determined that the compensable injury extends to polyarticular osteoarthritis of the right wrist and that determination was affirmed. The ALJ sent a POD after the CCH because the certification from Dr. L could not be adopted since it did not consider and rate the entire compensable injury. Dr. L's certification cannot be adopted.

(Dr. O), a post-designated doctor required medical examination doctor, examined the claimant on December 7, 2022, and certified that the claimant reached MMI on January 6, 2022, with a 4% IR. In this certification, Dr. O considered and rated a crushing injury to the right wrist, a crushing injury to the right hand, and a TFCC tear of the right wrist. Dr. O did not consider and rate polyarticular osteoarthritis of the right wrist. Dr. O did not consider and rate the entire compensable injury. Therefore, Dr. O's 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), extends to polyarticular osteoarthritis of the right wrist.

We affirm the ALJ's determination that the compensable injury sustained on (date of injury), does not extend to a crushing injury to the right forearm, other articular

cartilage disorder of the right wrist, CTS of the right wrist, or chronic tendinitis of the right wrist.

We reverse the ALJ's determination that the claimant reached MMI on March 30, 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 8% 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, which cannot be past the statutory MMI date of June 22, 2022, and rate the entire compensable injury, which is a crushing injury to the right wrist, a crushing injury to the right hand, a right wrist TFCC tear, and polyarticular osteoarthritis of the right wrist 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 a crushing injury to the right forearm, other articular cartilage disorder of the right wrist, CTS of the right wrist, or chronic tendinitis of the right wrist.

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 **REDWOOD FIRE AND CASUALTY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
d/b/a CSC-LAWYERS INCORPORATING SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701-3218.**

Margaret L. Turner
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Carisa Space-Beam
Appeals Judge