

APPEAL NO. 230303  
FILED APRIL 13, 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 20, 2022, with the record closing on January 26, 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 a cervical sprain and right knee patella pain syndrome; (2) the compensable injury of (date of injury), does not extend to post-concussion syndrome, right shoulder sprain, right bicep tenosynovitis, right knee medial meniscus tear, right knee anterior cruciate ligament tear, or tendinosis of the right shoulder; (3) the appellant (claimant) reached maximum medical improvement (MMI) on July 28, 2022; and (4) the claimant's impairment rating (IR) is 0%. The claimant appealed, disputing that portion of the ALJ's extent-of-injury determination that was against him, 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 a cervical sprain and right knee patella pain syndrome was not appealed 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 that extends to at least a head contusion, right shoulder contusion, and right knee contusion; and the Texas Department of Insurance, Division of Workers' Compensation (Division) appointed (Dr. L) as designated doctor to determine MMI, IR, and extent of injury. The claimant was injured while working as a mechanic on (date of injury), when a stack of tires fell, striking his head and right shoulder and caused him to fall and land on his right knee and right hand.

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 post-concussion syndrome, right shoulder sprain, right bicep tenosynovitis, right knee medial meniscus tear, right knee anterior cruciate ligament tear, or tendinosis of the right shoulder 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. L, the designated doctor appointed by the Division, was not contrary to the preponderance of the other medical evidence. Following the CCH on December 20, 2022, the ALJ issued a letter of clarification (LOC) to Dr. L on December 28, 2022, and asked him to provide a narrative and Report of Medical Evaluation (DWC-69) that includes a right knee contusion, right shoulder contusion, head contusion, and cervical sprain. The ALJ failed to ask Dr. L to include the compensable condition of right knee patella pain syndrome. On December 29, 2022, Dr. L responded and provided an amended report and DWC-69 which added "Scenario 4- Per [LOC]: Right knee contusion, right shoulder contusion, head contusion." Dr. L certified that the claimant reached MMI on April 28, 2022, with a 0% IR. He assigned a 0% impairment for the right shoulder, right knee, and head, and additionally placed the claimant in Diagnosis Related Estimate (DRE) Category I: Complaints or Symptoms of 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) for the cervical sprain. We note that Dr. L failed to include a cervical sprain in the list of diagnoses under Scenario 4. The ALJ issued a second LOC on January 13, 2023, requesting Dr. L to add the International Classification of Diseases (ICD) code for the cervical sprain to the DWC-69 for Scenario 4. Dr. L responded on January 16, 2023, stating that he added the code for Scenario 4 and provided a new DWC-69 that placed the claimant at MMI on July 28, 2022, with a 0% IR. The ALJ adopted this amended certification. However, Scenario 4 fails to consider or rate the compensable condition of right knee patella pain syndrome. Additionally, the MMI date under Scenario 4 of the amended narrative report states that the claimant reached MMI on April 28, 2022, not July 28, 2022. As the DWC-69 and narrative report are inconsistent and the entire compensable injury is not considered, the ALJ's determinations that the claimant reached MMI on July 28, 2022, with a 0% IR are reversed.

There are several other certifications in the record. Dr. L initially examined the claimant on July 28, 2022, and issued three alternate certifications. The first one certified the claimant reached MMI on April 28, 2022, with a 0% IR based on the carrier-accepted conditions of right knee contusion, right shoulder contusion, and head contusion. As this certification failed to rate a cervical sprain and right knee patella pain syndrome, it cannot be adopted. Dr. L's second and third certifications both stated that the claimant had not reached MMI. The second certification considered, among other conditions, post-concussion syndrome and right knee medial meniscus tear, conditions we have affirmed are not compensable. The third certification considered, among other conditions, right shoulder tendinosis, a condition we have affirmed is not compensable. Therefore, these certifications cannot be adopted.

Dr. L reexamined the claimant on November 29, 2022, and again issued three alternate certifications. The first one certified the claimant reached MMI on April 28, 2022, with a 0% IR based on the carrier-accepted conditions of right knee contusion, right shoulder contusion, and head contusion. As this certification failed to rate a cervical sprain and right knee patella pain syndrome, it cannot be adopted. The second and third certifications both stated that the claimant reached MMI on July 28, 2022, with a 0% IR. The second certification considered, among other conditions, right shoulder tendinosis, a condition we have affirmed is not compensable. The third certification considers the carrier-accepted conditions and right patella pain syndrome but fails to include the compensable cervical sprain. Therefore, these certifications cannot be adopted.

(Dr. M), a treating doctor referral, initially examined the claimant on August 8, 2022, and issued three alternate certifications. The first one certified that the claimant reached MMI on April 28, 2022, with a 12% IR based on the carrier-accepted conditions

of right knee contusion, right shoulder contusion, and head contusion. As this certification failed to rate a cervical sprain and right knee patella pain syndrome, it cannot be adopted. Dr. M's second and third certifications are identical and both state that the claimant had not reached MMI. These certifications considered, among other conditions, post-concussion syndrome and right knee medial meniscus tear, conditions we have affirmed are not compensable. Therefore, these certifications cannot be adopted. Dr. M then issued a DWC-69 dated December 15, 2022, that stated the claimant had not yet reached MMI based on the carrier-accepted conditions. It is unclear from Dr. M's attached narrative report how the claimant has not reached MMI based on those conditions, so that certification cannot be adopted.

(Dr. S), a carrier-selected required medical examination doctor, examined the claimant on October 20, 2022, and certified that the claimant reached MMI on April 28, 2022, with a 0% IR. Dr. S considered and rated the carrier-accepted conditions of right knee contusion, right shoulder contusion, and head contusion. As this certification failed to rate a cervical sprain and right knee patella pain syndrome, it 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 post-concussion syndrome, right shoulder sprain, right bicep tenosynovitis, right knee medial meniscus tear, right knee anterior cruciate ligament tear, or tendinosis of the right shoulder.

We reverse the ALJ's determination that the claimant reached MMI on July 28, 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 0% and remand the IR issue to the ALJ for further action consistent with this decision.

### **REMAND INSTRUCTIONS**

Dr. L is the designated doctor in this case. The ALJ is to determine whether Dr. L is still qualified and available to serve as designated doctor. If Dr. L 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 is a right knee contusion, right shoulder contusion, head contusion, cervical sprain, and right knee patella pain syndrome 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 post-concussion syndrome, right shoulder sprain, right bicep tenosynovitis, right knee medial meniscus tear, right knee anterior cruciate ligament tear, or tendinosis of the right shoulder.

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

**REGISTERED AGENT SOLUTIONS INC.  
5301 SOUTHWEST PKWY SUITE 400  
CORPORATE CENTER ONE  
AUSTIN, TEXAS 78735-8986.**

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Cristina Beceiro  
Appeals Judge

CONCUR:

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Carisa Space-Beam  
Appeals Judge

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Margaret L. Turner  
Appeals Judge