

APPEAL NO. 230494
FILED MAY 18, 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 5, 2023, with the record closing on March 7, 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 respondent (claimant) reached maximum medical improvement (MMI) on May 10, 2022; and (2) the claimant's impairment rating (IR) is 21%. The appellant (carrier) appealed, disputing the ALJ's determinations of MMI and IR. The claimant responded, urging affirmance.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated that the claimant sustained a compensable injury on (date of injury), that extends to at least a lumbar strain, left hip strain, left knee sprain, left wrist sprain, and left abnormal median neuropathy; and the Texas Department of Insurance, Division of Workers' Compensation (Division) appointed (Dr. P) as designated doctor for the purposes of MMI and IR. The claimant testified that she was injured on (date of injury), when she fell going down a ramp during a fire drill.

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).

MMI

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.

The ALJ determined that the claimant reached MMI on May 10, 2022. Dr. P, the designated doctor, examined the claimant on April 30, 2022, and certified the claimant reached MMI on April 23, 2022, and assessed a 25% 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 assessed impairment for loss of range of motion (ROM) of the claimant's left wrist, left hip, and left knee, and placed the claimant in Lumbosacral Diagnosis-Related Estimate Category II: Minor Impairment for 5% for the claimant's lumbar sprain and assessed 0% for the left abnormal median neuropathy. After the CCH, the ALJ sent a letter of clarification to Dr. P requesting clarification of the impairment assessed for loss of ROM for the claimant's left hip. Dr. P responded and acknowledged an error in the left hip ROM calculation. Dr. P provided an amended certification that certified the claimant reached MMI on April 23, 2022, with a 21% IR.

The ALJ specifically found in Finding of Fact No. 3 that Dr. P certified that the claimant reached MMI on May 10, 2022, with a 21% IR and that this certification was not contrary to the preponderance of the other medical evidence. The ALJ then determined that the claimant reached MMI on May 10, 2022. It is clear from the discussion of the evidence that the ALJ was persuaded that the claimant reached MMI as certified by the designated doctor but made a typographical error throughout her decision. The ALJ's finding that the preponderance of the other medical evidence is not contrary to the certification of the designated doctor is supported by the evidence. However, there is no certification from Dr. P, the designated doctor, that the claimant reached MMI on May 10, 2022. The ALJ inadvertently determined the date of MMI to be May 10, 2022, rather than April 23, 2022, as actually certified by Dr. P. Because the ALJ references the incorrect date in connection with Dr. P's MMI date throughout her decision, we cannot make a clerical correction. See Appeals Panel Decision 122622, decided February 15, 2013. Accordingly, we reverse the ALJ's determination that the claimant reached MMI on May 10, 2022, and render a new decision that the claimant reached MMI on April 23, 2022, to conform to the evidence.

IR

The ALJ's determination that the claimant's IR is 21% is supported by sufficient evidence and is affirmed.

SUMMARY

We reverse the ALJ's determination that the claimant reached MMI on May 10, 2022, and render a new decision that the claimant reached MMI on April 23, 2022, to conform to the evidence.

We affirm the ALJ's determination that the claimant's IR is 21%.

The true corporate name of the insurance carrier is **NORGUARD 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.**

Margaret L. Turner
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Carisa Space-Beam
Appeals Judge