

APPEAL NO. 230641
FILED JUNE 23, 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 was held on April 3, 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 disc herniation at L5-S1 with compression of the right S1 nerve root (radiculopathy); (2) the appellant (claimant) reached maximum medical improvement (MMI) on September 29, 2021; and (3) the claimant's impairment rating (IR) is zero percent. The claimant appealed, disputing the ALJ's determinations of extent of injury, MMI, and IR. The respondent (carrier) responded, urging affirmance of the ALJ's determinations.

DECISION

Affirmed in part, and reversed and remanded in part.

The parties stipulated, in part, that: (1) on (date of injury), the claimant sustained a compensable injury that extends to at least a right hamstring strain, lumbar strain, and right hip pain; and (2) the Texas Department of Insurance, Division of Workers' Compensation (Division) appointed (Dr. R) as the designated doctor for the purposes of extent of injury, MMI, and IR. The claimant, a ramp agent supervisor, was injured on (date of injury), when he jumped off a moving tug, rolled over several times and landed on his right hip.

The ALJ is the sole judge of the weight and credibility to 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 disc herniation at L5-S1 with compression of the right S1 nerve root (radiculopathy) is supported by sufficient evidence and is affirmed.

MMI

The ALJ's determination that the claimant reached MMI on September 29, 2021, is supported by sufficient evidence and is affirmed.

IR

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 that the claimant's IR is zero percent in accordance with one of the certifications of Dr. R, the designated doctor. Dr. R examined the claimant on April 21, 2022, and issued three alternate certifications. In the first certification, Dr. R certified that the claimant reached MMI on September 29, 2021, and assigned a zero percent IR considering a right hamstring strain. In the second certification, Dr. R determined that the claimant had not reached MMI considering a right hamstring strain, lumbar radiculopathy, and bilateral piriformis syndrome. In the third certification, Dr. R again certified that the claimant reached MMI on September 29, 2021, with a zero percent IR considering a right hamstring strain, lumbar strain, and right hip pain. The ALJ adopted this certification as it considered and rated the compensable conditions. 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. R placed the claimant in Lumbosacral Diagnosis-Related Estimate Category I: Complaints or Symptoms for the claimant's lumbar strain and assigned a zero percent IR. Dr. R also assigned zero percent impairment based on range of motion (ROM) measurements for the right knee and the right hip.

In his narrative report under the section titled Certification III, Dr. R provided the following ROM measurements for the claimant's right hip: flexion 120°; extension 0°; internal rotation 30°; external rotation 30°; abduction 30°; and adduction 20°. Dr. R correctly assessed zero percent impairment for the claimant's ROM measurements for flexion, extension, internal rotation, abduction, and adduction. However, Dr. R assessed zero percent impairment for 30° of external rotation. Table 40 on page 3/78 of the AMA Guides provides that 30° of external rotation results in two percent whole person impairment (WPI). In his narrative, Dr. R states that "ROM was within normal

limits and qualified for [zero percent] [WPI].” The measurement for external rotation for the claimant’s ROM for his right hip conflicts with Dr. R’s statement. Accordingly, we reverse the ALJ’s determination that the claimant’s IR is zero percent. We also note that under the physical examination section of his narrative, Dr. R reversed the ROM measurements for right hip abduction and right hip adduction; he listed the right hip abduction ROM as 20° and the right hip adduction ROM as 30°. Table 40 provides that 20° of abduction results in two percent WPI.

The Appeals Panel has previously stated that, where the certifying doctor’s report provides the component parts of the rating that are to be combined and the act of combining those numbers is a mathematical correction which does not involve medical judgment or discretion, the Appeals Panel can recalculate the correct IR from the figures provided in the certifying doctor’s report and render a new decision as to the correct IR. See Appeals Panel Decision (APD) 121194, decided September 6, 2012; APD 041413, decided July 30, 2004; APD 100111, decided March 22, 2010; and APD 101949, decided February 22, 2011. It is not clear from his narrative report whether Dr. R intended to assess impairment for the claimant’s loss of ROM for external rotation because of the conflicting comments regarding ROM in Dr. R’s narrative. Additionally, it is not clear what the correct ROM measurements for right hip abduction and adduction are. Consequently, this case is not a case where the IR can be mathematically corrected.

As discussed above, Dr. R’s first certification considered and rated only a right hamstring strain. As this certification did not rate the compensable conditions of lumbar strain and right hip pain, it cannot be adopted. Dr. R’s second certification found that the claimant had not reached MMI and considered a right hamstring strain, lumbar radiculopathy, and bilateral piriformis syndrome. This certification was based on a condition that we have affirmed is not compensable and a condition that has not yet been determined to be compensable. Additionally, we have affirmed the ALJ’s determination that the claimant reached MMI on September 29, 2021.

Dr. R examined the claimant again on October 13, 2022, and issued two alternate certifications. In the first certification, Dr. R again certified that the claimant reached MMI on September 29, 2021, with a zero percent IR considering a right hamstring strain. As this certification did not rate the compensable conditions of lumbar strain and right hip pain, it cannot be adopted. In the second certification, Dr. R found that the claimant had not reached MMI and considered a right hamstring strain, disc herniation at L5-S1 with compression of the right S1 nerve root, lumbar radiculopathy, and bilateral piriformis syndrome. This certification was based on conditions that we have affirmed are not compensable and a condition that has not yet been determined to

be compensable. Additionally, we have affirmed the ALJ's determination that the claimant reached MMI on September 29, 2021. Therefore, it cannot be adopted.

(Dr. B), a required medical examination doctor, examined the claimant on February 27, 2023, and issued two certifications. The first certification found the claimant reached MMI on September 29, 2021, with a zero percent IR based on the conditions of right hamstring strain and low back strain. This certification did not include ROM measurements for the right hip and did not specifically rate the compensable condition of right hip pain, so it cannot be adopted. The second certification found the claimant reached MMI on October 13, 2022, with a five percent IR based on the conditions of right hamstring strain, low back strain, bilateral piriformis syndrome, and disc herniation at L5-S1 with lumbar radiculopathy. This certification considered conditions that we have affirmed are not compensable and a condition that has not yet been determined to be compensable. Additionally, we have affirmed the ALJ's determination that the claimant reached MMI on September 29, 2021. Therefore, it cannot be adopted.

There are no other certifications in evidence. Accordingly, we remand the issue of 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 disc herniation at L5-S1 with compression of the right S1 nerve root (radiculopathy).

We affirm the ALJ's determination that the claimant reached MMI on September 29, 2021.

We reverse the ALJ's determination that the claimant's IR is zero percent and remand the issue of IR to the ALJ for further action consistent with this decision.

REMAND INSTRUCTIONS

Dr. R is the designated doctor in this case. On remand, the ALJ is to determine whether Dr. R is still qualified and available to be the designated doctor.

The ALJ is to request that the designated doctor rate the entire compensable injury, which is a right hamstring strain, lumbar strain, and right hip pain, based on the claimant's condition as of the date of MMI, September 29, 2021. The ALJ is to advise the designated doctor that according to the AMA Guides, 30° of external rotation for the hip results in two percent WPI. The ALJ is to request that the designated doctor clarify the correct ROM measurements for the right hip abduction and adduction. The ALJ is

to request that the designated doctor clarify whether he intended to assign impairment for the claimant's loss of ROM.

The parties are to be provided with 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 a determination on the 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 APD 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **INDEMNITY INSURANCE COMPANY OF NORTH AMERICA** 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.**

Cristina Beceiro
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge