

APPEAL NO. 230824
FILED JULY 27, 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 May 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 a right wrist triangular fibrocartilage tear, right median nerve neuropathy, carpal tunnel syndrome (CTS) right hand, delamination of the foveal and styloid attachments of the peripheral triangular fibrocartilage complex from the ulnar styloid, full-thickness perforation of the scapholunate ligament, or tendinosis of the carpi ulnaris tendon; (2) the appellant (claimant) reached maximum medical improvement (MMI) on August 29, 2022; (3) the claimant's impairment rating (IR) is one percent; (4) the claimant had disability resulting from the injury sustained on (date of injury), from April 27, 2022, through June 22, 2022; and (5) the claimant did not have disability resulting from the injury sustained on (date of injury), from June 23, 2022, through the date of the CCH.

The claimant appealed, disputing the ALJ's determinations of extent of injury, the disability period not in his favor, MMI, and IR. The respondent (carrier) responded, urging affirmance of the appealed determinations. The ALJ's determination that the claimant had disability resulting from the injury sustained on (date of injury), from April 27, 2022, through June 22, 2022, was not appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury), that extends to at least a right wrist sprain, and that (Dr. W) was selected by the Texas Department of Insurance, Division of Workers' Compensation (Division) to determine MMI, IR, and extent of injury. The claimant was injured on (date of injury), while moving a heavy bin to load onto a trailer. The claimant testified that as he was maneuvering it, the momentum of the bin caused him to hyperextend his right 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 of (date of injury), does not extend to a right wrist triangular fibrocartilage tear, right median nerve neuropathy, CTS right hand, delamination of the foveal and styloid attachments of the peripheral triangular fibrocartilage complex from the ulnar styloid, full-thickness perforation of the scapholunate ligament, or tendinosis of the carpi ulnaris tendon is supported by sufficient evidence and is affirmed.

DISABILITY

The ALJ's determination that the claimant did not have disability resulting from the injury sustained on (date of injury), from June 23, 2022, through the date of the CCH is supported by sufficient evidence and is affirmed.

MMI

The ALJ's determination that the claimant reached MMI on August 29, 2022, 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 the claimant's IR is one percent as certified by Dr. W, the designated doctor. Dr. W examined the claimant on October 14, 2022, and issued alternate certifications. In the first certification Dr. W opined the claimant had not reached MMI based on the disputed extent-of-injury conditions. This certification is unadoptable because we have affirmed the ALJ's determination that the claimant

reached MMI on August 29, 2022, and because it is based on noncompensable conditions.

Dr. W's alternate certification considered and rated the compensable right wrist sprain. However, his certification contained typographical errors regarding the date of MMI between the Report of Medical Evaluation (DWC-69) and his narrative report, which resulted in two different letters of clarification. After clarifying the MMI date in his responses, Dr. W submitted a corrected DWC-69 certifying the claimant reached MMI on August 29, 2022, with a one 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) and range of motion measurements for the right wrist from his exam, Dr. W assessed the following upper extremity (UE) impairments: zero percent UE impairment for 50° of ulnar deviation, zero percent UE impairment for 30° of radial deviation, zero percent UE impairment for 60° of extension, and two percent UE impairment for 40° of flexion. Dr. W added the zero percent UE impairments for ulnar deviation, radial deviation, and extension to the two percent UE impairment for a total UE impairment of two percent. Using Table 3 on page 3/20 of the AMA Guides, Dr. W converted the two percent UE impairment to one percent whole person impairment (WPI).

Although Dr. W's zero percent UE impairments for ulnar deviation, radial deviation, and extension were correct, his two percent UE impairment for 40° of flexion was not. Figure 26 on page 3/36 of the AMA Guides provides that 40° of flexion results in three percent UE impairment. Table 3 on page 3/20 of the AMA Guides provides that three percent UE impairment converts to two percent WPI, not one percent WPI as certified by Dr. W.

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) 171766, decided September 7, 2017; APD 172488, decided December 18, 2017; APD 152464, decided February 17, 2016; 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.

The ALJ found that the preponderance of the other medical evidence is not contrary to Dr. W's certification that the claimant reached MMI on August 29, 2022, with a one percent IR. After a mathematical correction, that finding is supported by the

evidence. Accordingly, we reverse the ALJ's determination that the claimant's IR is one percent and render a new decision that the claimant's IR is two percent, as mathematically corrected.

SUMMARY

We affirm the ALJ's determination that the compensable injury of (date of injury), does not extend to a right wrist triangular fibrocartilage tear, right median nerve neuropathy, CTS right hand, delamination of the foveal and styloid attachments of the peripheral triangular fibrocartilage complex from the ulnar styloid, full-thickness perforation of the scapholunate ligament, or tendinosis of the carpi ulnaris tendon.

We affirm the ALJ's determination that the claimant did not have disability resulting from the injury sustained on (date of injury), from June 23, 2022, through the date of the CCH.

We affirm the ALJ's determination that the claimant reached MMI on August 29, 2022.

We reverse the ALJ's determination that the claimant's IR is one percent, and we render a new decision that the claimant's IR is two percent, as mathematically corrected.

The true corporate name of the insurance carrier is **GREAT WEST CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**MICHAEL METZGER
624 SIX FLAGS DRIVE, SUITE 240
ARLINGTON, TEXAS 76011.**

Carisa Space-Beam
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Margaret L. Turner
Appeals Judge