

APPEAL NO. 230839  
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 was held on October 20, 2022, with the record closing on April 20, 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 October 23, 2022; and (2) the claimant's impairment rating (IR) is 21%. The appellant (carrier) appealed the ALJ's determinations of MMI and IR. The claimant responded to the carrier's appeal, urging affirmance of the ALJ's determinations.

**DECISION**

Affirmed in part and reversed and rendered in part.

The parties stipulated, in part, that: (1) on (date of injury), the claimant sustained a compensable injury that extended to a right knee ACL tear and a right knee bucket handle medial meniscus tear; and (2) the Texas Department of Insurance, Division of Workers' Compensation (Division) selected (Dr. K) as designated doctor to determine MMI and IR. The claimant, a delivery driver, was injured on (date of injury), while making a delivery. The evidence indicates that he pivoted to avoid a mud puddle and felt a pop in his right knee.

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).

**ABUSE OF DISCRETION**

The carrier contends that the ALJ abused her discretion in appointing a new designated doctor in this case. In determining whether there has been an abuse of discretion, the Appeals Panel looks to see whether the ALJ acted without reference to any guiding rules or principles. *Morrow v. H.E.B., Inc.*, 714 S.W.2d 297 (Tex. 1986). If a designated doctor cannot or refuses to comply with the requirements of the 1989 Act, a second designated doctor may be appointed. Appeals Panel Decision (APD) 961436, decided September 5, 1996. Under the circumstances of this case, we do not find the ALJ's actions an abuse of discretion.

## MMI

The ALJ's determination that the claimant reached MMI on October 23, 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 that the claimant reached MMI on October 23, 2022, with a 21% IR in accordance with the certification of (Dr. E), the second designated doctor appointed in this case. Dr. E examined the claimant on November 29, 2022, and in the adopted certification, assigned the 21% IR based on the compensable conditions of a right knee ACL tear and right knee bucket handle medial meniscus tear. 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. E assessed 21% impairment based on range of motion (ROM) deficits in the right knee from (Dr. B) October 10, 2022, examination. Dr. E assigned 8% impairment based on 80° of flexion and 14% impairment based on -30° of flexion contracture. She then combined the impairments for a total 21% IR.

In Section 3.2 titled "The Lower Extremity," page 3/75, the AMA Guides provides, in part, that:

If the patient has several impairments of the same lower extremity part, such as the leg, or impairments of different parts, such as the ankle and a toe, the whole-person estimates for the impairments are *combined* (Combined Values Chart, p. 322). If both extremities are impaired, the impairment of each should be evaluated and expressed in terms of the whole person, and the two percents should be *combined* (Combined Values Chart, p. 322)(emphasis in the original).

In Section 3.2e titled "[ROM]," page 3/77, the AMA Guides provides, in part, that "[e]valuating permanent impairment of the lower extremity according to its [ROM] is a suitable method." Section 3.2e does not require that a certifying doctor must only use the most severe

impairment for an individual direction of motion within the same table (Tables 40 through 43). See also APD 110741, decided July 25, 2011.

Dr. E combined impairment for two planes of motion for knee motion impairment provided in Table 41 on page 3/78 of the AMA Guides. However, there was a mistake in Dr. E's right knee impairment calculation. According to Table 41 on page 3/78 of the AMA Guides, a moderate impairment is less than 80° of flexion and a mild impairment is less than 110° of flexion. Therefore, 80° of flexion results in a 4% whole person impairment (WPI), instead of an 8% WPI as certified by Dr. E.

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 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. Under the facts of this case, Dr. E's assigned IR can be mathematically corrected based on the documented measurements for the right knee.

Combining 4% impairment for flexion and 14% impairment for flexion contracture results in a 17% WPI, rather than the 21% WPI assigned by Dr. E.

The ALJ found that the preponderance of the other medical evidence is not contrary to the certification of Dr. E. After a mathematical correction, that finding is supported by the evidence. Accordingly, we reverse the ALJ's determination that the claimant's IR is 21%, and we render a new decision that the claimant's IR is 17%, as mathematically corrected.

### **SUMMARY**

We affirm the ALJ's determination that the claimant reached MMI on October 23, 2022.

We reverse the ALJ's determination that the claimant's IR is 21%, and we render a new decision that the claimant's IR is 17%, as mathematically corrected.

The true corporate name of the insurance carrier is **ACCIDENT FUND INSURANCE COMPANY OF 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.**

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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