

APPEAL NO. 231343
FILED NOVEMBER 2, 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 August 15, 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 right shoulder superior labrum anterior to posterior (SLAP) tear, right para-labral cyst, right shoulder joint effusion, right adhesive capsulitis, right shoulder impingement syndrome, or right bicep tenodesis; (2) the appellant (claimant) reached maximum medical improvement (MMI) on February 7, 2023; and (3) the claimant's impairment rating (IR) is two percent. The claimant appealed the ALJ's determinations of extent of injury, MMI, and IR. The respondent (self-insured) responded, urging affirmance of the disputed determinations.

DECISION

Affirmed as reformed.

The parties stipulated, in part, that: (1) on (date of injury), the claimant sustained a compensable injury that extends to at least a strain of the long head of the biceps right shoulder, right shoulder strain/partial thickness tear of the supraspinatus tendon, low grade sprain of the coracoclavicular ligament, strain of sternocleidomastoid, and part of the right side of trapezium muscles on the right side of neck; (2) for the purposes of this hearing, a strain of the long head of the biceps right shoulder is the same condition as a right shoulder biceps strain; a right shoulder strain/partial thickness tear of the supraspinatus tendon is the same condition as a supraspinatus strain; a low grade sprain of the coracoclavicular ligament is the same condition as a right shoulder sprain; and a strain of sternocleidomastoid and part of the right side of trapezium muscles on the right side of neck is the same condition as a cervical strain; and (3) the Texas Department of Insurance, Division of Workers' Compensation (Division) appointed (Dr. C) as designated doctor to address MMI and IR. The claimant was injured on (date of injury), while working as a special education teacher when a student she was attempting to control threw himself to the ground, jerking her right arm downwards.

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 right shoulder SLAP tear, right para-labral cyst, right shoulder joint effusion, right adhesive capsulitis, right shoulder impingement syndrome, or right bicep tenodesis is supported by sufficient evidence and is affirmed.

MMI AND IR

The ALJ determined the claimant reached MMI on February 7, 2023, with a two percent IR. The ALJ's determinations are supported by sufficient evidence and are affirmed. However, a decision is being written to address mistakes made by the ALJ in her discussion.

In her discussion of the evidence, the ALJ noted "[t]he designated doctor, (Dr. Cl)] was not asked to opine on the extent of injury." However, as stated previously, the parties stipulated, and the evidence reflects, that the designated doctor in this case is Dr. C, not Dr. Cl. The ALJ also states that Dr. Cl persuasively explained that the claimant reached MMI on February 7, 2023, and correctly assigned an IR of two percent. The evidence reflects that there is no report from a doctor in evidence named Dr. Cl. Dr. C was the doctor who examined the claimant on February 7, 2023, and certified the claimant reached MMI on that date with a two percent IR. Therefore, we reform all references in the ALJ's decision of Dr. Cl to Dr. C.

The ALJ found in Finding of Fact No. 4 that the preponderance of the other medical evidence is not contrary to the February 7, 2023, date of MMI and assigned IR of two percent as certified by Dr. Cl. After reforming the finding to state the certification was from Dr. C, not Dr. Cl, Finding of Fact No. 4 is supported by sufficient evidence and is affirmed. Accordingly, we affirm the ALJ's determinations that the claimant reached MMI on February 7, 2023, and the IR is two percent.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

(NAME)
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

Cristina Beceiro
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge