

APPEAL NO. 231453
FILED NOVEMBER 21, 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 August 22, 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 carpal tunnel syndrome (CTS), tenosynovitis of the right hand, or tenosynovitis of the right shoulder; (2) the appellant (claimant) reached maximum medical improvement (MMI) on January 12, 2023; (3) the claimant's impairment rating (IR) is zero percent; and (4) the claimant had disability from September 14, 2022, through January 11, 2023, and for no other dates through the date of the CCH. The claimant appealed, disputing the ALJ's determinations of extent of injury, MMI, IR, and that portion of the disability period that was adverse to her. The respondent (carrier) responded, urging affirmance of the disputed determinations. That portion of the ALJ's determination that the claimant had disability from September 14, 2022, through January 11, 2023, was not appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed as reformed.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury), that extends to at least a Grade 1 right wrist sprain; the Texas Department of Insurance, Division of Workers' Compensation (Division) appointed (Dr. P) as designated doctor to address MMI, IR, and return to work; and the terms sprain, strain, and sprain/strain are used interchangeably in the claim to assess MMI and IR. The claimant, an inventory control specialist for the employer, testified her right wrist was injured while using an approximately three-pound scan gun to scan cars.

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 CTS, tenosynovitis of the right hand, or tenosynovitis of the right shoulder is supported by sufficient evidence and is affirmed.

DISABILITY

That portion of the ALJ's determination that the claimant did not have disability from January 12, 2023, 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 January 12, 2023, 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 reached MMI on January 12, 2023, with a zero percent IR as determined by Dr. P, the designated doctor. Dr. P examined the claimant on February 18, 2023, and certified the claimant reached MMI on January 12, 2023, with a zero 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). Dr. P's narrative report reflects he considered a right wrist Grade 1 strain. Regarding the claimant's IR, Dr. P noted in his narrative report that "[t]here were no [range of motion (ROM)] values taken on the date of clinical MMI; therefore, the values to determine the [IR] will be used on the date of this examination." Dr. P listed the following right wrist ROM measurements and impairments from Figure 26 on page 3/36 and Figure 29 on page 3/38 of the AMA Guides: 55° of flexion for zero percent impairment; 55° of extension for zero percent impairment; 30° of ulnar deviation for zero percent impairment; and 15° of radial deviation for zero percent impairment. However, earlier in his narrative report under the examination portion Dr. P noted different right wrist flexion

and extension ROM measurements; specifically, 50° of flexion and 30° of extension. Dr. P's narrative contains conflicting ROM measurements for right wrist flexion and extension. Figure 26 on page 3/36 of the AMA Guides provides that 50° of flexion results in two percent upper extremity (UE) impairment, and 30° of extension results in five percent UE impairment. Given the discrepancy in the ROM measurements and resulting impairments in Dr. P's narrative, the zero percent IR assigned cannot be adopted.

There are other certifications in evidence, which are from (Dr. Pr), a doctor acting in place of the treating doctor. Dr. Pr examined the claimant on March 2, 2023, and issued alternate certifications. However, only one certified an MMI date of January 12, 2023, which is the date of MMI in this case, and considered a Grade 1 right wrist strain. We note the parties stipulated the compensable injury extends to at least a Grade 1 right wrist sprain, and that the terms sprain, strain, and sprain/strain are used interchangeably in the claim to assess MMI and IR. Dr. Pr's narrative report reflects the claimant's examination resulted in full ROM of the right wrist; therefore, Dr. Pr assigned a zero percent IR. Dr. Pr's certification considered and rated the compensable injury and was made in accordance with the AMA Guides. Because a zero percent is supported by the evidence based on the report of Dr. Pr rather than the report of Dr. P, the ALJ's determination that the claimant's IR is zero percent is affirmed but reformed to reflect that the claimant's IR is zero percent per the report of Dr. Pr.

SUMMARY

We affirm the ALJ's determination that the compensable injury of (date of injury), does not extend to right CTS, tenosynovitis of the right hand, or tenosynovitis of the right shoulder.

We affirm that portion of the ALJ's determination that the claimant did not have disability from January 12, 2023, through the date of the CCH.

We affirm the ALJ's determination that the claimant reached MMI on January 12, 2023.

We affirm the ALJ's determination that the claimant's IR is zero percent based on the report of Dr. Pr rather than Dr. P.

The true corporate name of the insurance carrier is **ACE AMERICAN 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 75201-3136.**

Carisa Space-Beam
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Margaret L. Turner
Appeals Judge