

APPEAL NO. 231558
FILED DECEMBER 14, 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 September 27, 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 lumbar spinal stenosis at L4-5, cervical neuromuscular scoliosis, or peripheral neuropathy; (2) the appellant (claimant) reached maximum medical improvement (MMI) on December 23, 2022; and (3) the claimant's impairment rating (IR) is five percent. The claimant appealed, disputing the ALJ's determinations. The respondent (carrier) responded, urging affirmance of the appealed determinations.

DECISION

Affirmed in part and reversed and remanded in part.

The parties stipulated, in part, that: the claimant sustained a compensable injury on (date of injury), that extends to at least a cervical strain/sprain, lumbar strain, and a right leg contusion; the first designated doctor selected by the Texas Department of Insurance, Division of Workers' Compensation (Division) on the issues of extent of injury, MMI, and IR was (Dr. F); the second designated doctor selected by the Division on the issues of extent of injury, MMI, and IR was (Dr. C); and the statutory date of MMI is September 29, 2023. The claimant was injured on (date of injury), when she slipped and fell to the ground when exiting a car.

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 lumbar spinal stenosis at L4-5, cervical neuromuscular scoliosis, or peripheral neuropathy is supported by sufficient evidence and is affirmed.

MMI/IR

Section 401.011(30)(A) defines MMI as “the earliest date after which, based on reasonable medical probability, further material recovery from or lasting improvement to an injury can no longer reasonably be anticipated.” Section 408.1225(c) provides that the report of the designated doctor has presumptive weight, and the Division shall base its determination of whether the employee has reached MMI on the report of the designated doctor unless the preponderance of the other medical evidence is to the contrary.

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 December 23, 2022, with a five percent IR as certified by Dr. C, the second designated doctor. Dr. C examined the claimant on July 6, 2023, and issued alternate certifications. In the first Dr. C opined the claimant had not reached MMI considering, in part, treatment for spinal stenosis, which is a condition that has been determined to not be part of the compensable injury. Additionally, given that the statutory date of MMI in this case is September 29, 2023, this certification cannot be adopted. See Appeals Panel Decision (APD) 200978, decided August 25, 2020; APD 172017 decided October 3, 2017; and APD 131554, decided September 3, 2013.

In his alternate certification Dr. C certified the claimant reached MMI on December 23, 2022, with a five 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. C’s narrative report reflects the following diagnoses as comprising the compensable injury: cervical strain and sprain, lumbar strain, right leg contusion, and right hand pain. Dr. C assigned zero percent impairment for the claimant’s cervical sprain and strain as well as the claimant’s right leg contusion, and assigned five percent impairment for the claimant’s lumbar strain. Dr. C also assigned zero percent impairment for the claimant’s right hand and wrist. The compensable injury in this case is a cervical strain/sprain, lumbar strain, and a right leg contusion. Dr.

C's certification considers and rates conditions that have not yet been determined to be part of the compensable injury. Accordingly, we reverse the ALJ's determination that the claimant reached MMI on December 23, 2022, with a five percent IR.

There are other certifications in evidence. Dr. F, the first designated doctor, examined the claimant on May 20, 2022, and opined the claimant has not reached MMI. Because the statutory date of MMI in this case is September 29, 2023, this certification cannot be adopted. See APD 200978, *supra*.

(Dr. S), a doctor acting in place of the treating doctor, examined the claimant on January 3, 2023, and certified the claimant reached MMI on December 23, 2022, with a zero percent IR. However, Dr. S's narrative report reflects he only considered and rated the claimant's lumbar and cervical spine; he did not discuss the claimant's right leg contusion, which is part of the compensable injury. This certification cannot be adopted. Also in evidence is a narrative report from Dr. S reflecting he examined the claimant on April 22, 2022, and opined the claimant had reached MMI on April 12, 2022, with a zero percent IR. However, there is no corresponding Report of Medical Evaluation (DWC-69) in evidence. Rule 130.1(d)(1) states in pertinent part that a certification of MMI and assignment of an IR requires completion, signing, and submission of the DWC-69 and a narrative report. See APD 131085, decided June 27, 2013; and APD 151527, decided October 1, 2015. Additionally, Dr. S indicates in his narrative report that he considered a left knee and left leg injury, neither of which have been determined to be part of the compensable injury. Accordingly, the date of MMI and IR provided in Dr. S's April 22, 2022, narrative report cannot be adopted.

There is no other certification in evidence that can be adopted; accordingly, we remand the issues of MMI and 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 lumbar spinal stenosis at L4-5, cervical neuromuscular scoliosis, or peripheral neuropathy.

We reverse the ALJ's determination that the claimant reached MMI on December 23, 2022, and remand the issue of MMI to the ALJ for further action consistent with this decision.

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

REMAND INSTRUCTIONS

Dr. C is the designated doctor in this case. The ALJ is to determine whether Dr. C is still qualified and available to be the designated doctor. If Dr. C is no longer qualified or available to serve as the designated doctor, then another designated doctor is to be appointed.

The ALJ is to advise the designated doctor that the (date of injury), compensable injury extends to a cervical strain/sprain, lumbar strain, and a right leg contusion, but does not extend to lumbar spinal stenosis at L4-5, cervical neuromuscular scoliosis, or peripheral neuropathy. The ALJ is also to advise the designated doctor that the date of statutory MMI in this case is September 29, 2023.

The ALJ is to request the designated doctor give an opinion on the claimant's date of MMI, which cannot be after the statutory date of September 29, 2023, and rate the entire compensable injury in accordance with the AMA Guides considering the medical record and the certifying examination. The parties are to be provided with the designated doctor's new certification and to be allowed an opportunity to respond. The ALJ is then to make a determination of MMI and 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 **ACCIDENT FUND GENERAL 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