

APPEAL NO. 231700
FILED DECEMBER 28,2023

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 4, 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 sustained on (date of injury), extends to right knee medial meniscus tear and unspecified internal derangement of the right knee; (2) the appellant (claimant) reached maximum medical improvement (MMI) on November 22, 2022; and (3) the claimant's impairment rating (IR) is 2%. The claimant appealed, disputing the ALJ's determination of IR. The respondent (carrier) responded, urging affirmance of the disputed IR determination. The ALJ's determinations that the compensable injury extends to right knee medial meniscus tear and unspecified internal derangement of the right knee and the claimant reached MMI on November 22, 2022, were not appealed and have become final pursuant to Section 410.169.

DECISION

Reversed and rendered.

The parties stipulated, in part, that on (date of injury), the claimant sustained a compensable injury that extends to at least a right knee sprain/strain; the statutory date of MMI is November 22, 2022; and the Texas Department of Insurance, Division of Workers' Compensation (Division) appointed (Dr. W) as the designated doctor to determine MMI, IR, and extent of injury. The claimant testified that he was injured on (date of injury), when he was on a ladder moving a heavy box and the box slipped and he caught it with his right foot causing his right knee to twist.

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 2% as certified by Dr. W, the designated doctor appointed by the Division on the issues of MMI and IR. Dr. W examined the claimant on June 9, 2023, and certified the claimant reached MMI on November 22,

2022, considering a right knee sprain/strain, right medial meniscus tear, and unspecified internal derangement of right knee.¹ Dr. W noted in his narrative report that he used range of motion (ROM) measurements from the December 12, 2022, designated doctor evaluation because “they most closely approximate” the statutory MMI date. 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 the ROM measurements from his examination of December 12, 2022, Dr. W assigned 2% whole person impairment (WPI). Dr. W noted the claimant had flexion of 105° and referenced Table 41, page 3/78 of the AMA Guides. However, Dr. W incorrectly noted that the 4% impairment assessed using Table 41 was lower extremity impairment and then converted the 4% impairment to 2% WPI. Table 41 reflects two percentages at the top of the table representing both the WPI and the lower extremity impairment. The table indicates that the lower extremity impairment is designated in parentheses. Table 41 provides that loss of ROM of extension of 105° results in 4% WPI and 10% lower extremity impairment. Dr. W should not have converted the 4% impairment to whole person because the 4% impairment already represented the WPI for the loss of ROM of flexion of the right knee.

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

Using Table 41, page 3/78 of the AMA Guides, a loss of ROM of 105° for flexion of the knee results in 4% WPI, rather than the 2% WPI assigned by Dr. W.

The ALJ found that Dr. W’s certification that the claimant reached MMI on November 22, 2022, with a 2% IR is not contrary to the preponderance of the other medical evidence. After a mathematical correction, that finding is supported by the

¹ We note that Dr. W also provided an alternate certification on June 9, 2023, that certified the claimant reached MMI on March 29, 2022, and assessed a 0% impairment considering only a right knee sprain/strain.

evidence. Accordingly, we reverse the ALJ's determination that the claimant's IR is 2%, and we render a new decision that the claimant's IR is 4%, as mathematically corrected.

The true corporate name of the insurance carrier is **STARSTONE NATIONAL 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 75201-3140.**

Margaret L. Turner
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Carisa Space-Beam
Appeals Judge