

APPEAL NO. 231735
FILED JANUARY 19, 2024

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 25, 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 appellant (claimant) reached maximum medical improvement (MMI) on January 26, 2023; and (2) the claimant's impairment rating (IR) is 2%. The claimant appealed, disputing the ALJ's determinations. The respondent (self-insured) responded, urging affirmance of the disputed determinations.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury), in the form of a right knee contusion, left wrist sprain, lumbar sprain, left shoulder contusion, and left hip contusion, and the Texas Department of Insurance, Division of Workers' Compensation (Division) appointed (Dr. R) as designated doctor on the issues of MMI and IR. The claimant was injured on (date of injury), when a student threw three metal chairs at her.

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).

MMI

The ALJ's determination that the claimant reached MMI on January 26, 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 26, 2023, with a 2% IR as certified by (Dr. O), the post-designated doctor required medical examination doctor. Dr. O examined the claimant on September 13, 2023, and, considering a right knee contusion, left wrist sprain, lumbar sprain, left shoulder contusion, and left hip contusion, which is the compensable injury in this case, certified the claimant reached MMI on January 26, 2023. 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. O assigned a 2% IR based on range of motion (ROM) deficits of the claimant's left wrist. Dr. O calculated the 2% IR as follows: 0% upper extremity (UE) impairment for 60° of flexion and 2% UE impairment for 45° of extension under Figure 26 on page 3/36 of the AMA Guides; 0% UE impairment for 20° of radial deviation and 1% UE impairment for 25° of ulnar deviation using Figure 29 on page 3/38 of the AMA Guides. Dr. O added the UE impairments to arrive at 3% UE impairment, and using Table 3 on page 3/20 of the AMA Guides converted the 3% UE impairment to 2% whole person impairment (WPI). Dr. O assigned 0% impairment for the remaining conditions.

Figure 29 on page 3/38 of the AMA Guides uses increments of 5°, whereas the general directions on page 3/37 state to round the measurements of ulnar deviation to the nearest 10°. This conflict is resolved by looking to the general directions of interpolating, measuring, and rounding off which are found on page 2/9 of the AMA Guides, and which provide as follows in relevant part:

In general, an impairment value that falls between those appearing in a table or figure of the [AMA Guides] may be adjusted or interpolated to be proportional to the interval of the table or figure involved, unless the book gives other directions.

Here the AMA Guides do give other directions than applying the values given in Figure 29 on page 3/38. Those directions are on page 3/37 and provide that the measurements be rounded to the nearest 10°. Using the language cited above from page 2/9 of the AMA Guides, these directions control over Figure 29 and should have been applied in calculating the claimant's IR. See Appeals Panel Decision (APD) 022504-s, decided November 12, 2002; and APD 111384, decided November 23, 2011. See *also* APD 131541, decided August 29, 2013; APD 220745, decided July 1, 2022;

and APD 230023, decided February 17, 2023. Dr. O failed to round the measurements of ulnar deviation of the left wrist to the nearest 10° to determine the UE impairment.

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 121194, decided September 6, 2012; APD 041413, decided July 30, 2004; APD 100111, decided March 22, 2010; and APD 101949, decided February 22, 2011. However, in the case on appeal, Dr. O's 2% IR cannot be corrected. Dr. O failed to round the measurements of ulnar deviation of the wrist to the nearest 10° to determine the UE impairment. Rounding ulnar deviation to derive the correct UE impairment requires medical judgment or discretion, so we cannot recalculate the correct IR using Dr. O's figures.

There is one other certification in evidence that certifies a January 26, 2023, date of MMI, which is from Dr. R, the designated doctor. Dr. R examined the claimant on March 4, 2023, and issued alternate certifications; however, only one of those certified the claimant reached MMI on January 26, 2023, which is the date of MMI in this case, and considers and rates a right knee contusion, left wrist sprain, lumbar sprain, left shoulder contusion, and left hip contusion. Using the AMA Guides Dr. R assigned 11% UE impairment based on ROM deficits of the claimant's left shoulder, and 2% UE impairment based on ROM deficits of the claimant's left wrist, which Dr. R calculated as 13% UE impairment and correctly converted to 8% WPI using Table 3 on page 3/20 of the AMA Guides. Dr. R assigned 4% WPI based on ROM deficits of the claimant's left hip, 0% impairment for the claimant's right knee, and 0% impairment for the lumbar sprain under Diagnosis-Related Estimate Lumbosacral Category I: Complaints or Symptoms. Dr. R combined 8% WPI for the left UE, 4% WPI for the left hip, 0% WPI for the right knee, and 0% WPI for the lumbar sprain for a total IR of 12%. Dr. R's certification considers and rates the compensable injury in this case and was made in accordance with the AMA Guides. Accordingly, we render a new decision that the claimant's IR is 12% as certified by Dr. R.

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).

Carisa Space-Beam
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Margaret L. Turner
Appeals Judge