

APPEAL NO. 231788  
FILED FEBRUARY 14, 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 November 7, 2023, in (city), Texas, with (administrative law judge) presiding as the administrative law judge (ALJ). The ALJ resolved the disputed issued by determining that: (1) the compensable injury of (date of injury), extends to mild traumatic brain injury, head concussion, and headaches; (2) the compensable injury of (date of injury), does not extend to post-concussion syndrome, vestibular disturbance, dizziness, hearing loss, tinnitus, endolymphatic hydrops (Meniere Disease), depression, or anxiety; (3) the appellant/cross-respondent (claimant) reached maximum medical improvement (MMI) on May 26, 2020; and (4) the claimant's impairment rating (IR) is 0%. The claimant appealed, disputing the ALJ's determination of extent of injury that was adverse to him, as well as the ALJ's determinations of MMI and IR. The respondent/cross-appellant (carrier) responded, urging affirmance of the appealed determinations. The carrier cross-appealed, disputing the ALJ's determination of extent of injury that was favorable to the claimant. The appeal file does not contain a response from the claimant to the carrier's cross-appeal.

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 low back strain, head contusion, and head abrasion; the date of statutory MMI is October 20, 2022; the first designated doctor selected by the Texas Department of Insurance, Division of Workers' Compensation (Division) for extent of injury was (Dr. K); and the second designated doctor selected by the Division for extent of injury, MMI, and IR was (Dr. C). The claimant was injured on (date of injury), when he hit his head on a steel beam. The claimant testified that at the time he hit his head he was wearing a type of welding helmet that is used to protect the user's eyes while welding. The claimant also testified he lost consciousness after hitting his head. We note the ALJ's decision incorrectly identifies the carrier's registered agent of process as CT Corporation, whereas the carrier's information sheet in evidence identifies the name as CT Corporation System.

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 determinations that the compensable injury of (date of injury), extends to mild traumatic brain injury, head concussion, and headaches, but does not extend to post-concussion syndrome, vestibular disturbance, dizziness, hearing loss, tinnitus, endolymphatic hydrops (Meniere Disease), depression, or anxiety are supported by sufficient evidence and are 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 May 26, 2020, with a 0% IR as certified by Dr. C, the designated doctor. Dr. C initially examined the claimant on January 6, 2023, and certified the claimant reached MMI on October 20, 2022, with a 13% IR. However, Dr. C's accompanying narrative report reflects this certification considered and rated, among other conditions, vestibular disturbance, dizziness, tinnitus, and hearing loss. The ALJ's determination that the compensable injury does not extend to vestibular disturbance, dizziness, tinnitus, and hearing loss has been affirmed. Accordingly, this certification is not adoptable.

Dr. C next examined the claimant on August 23, 2023, and issued alternate certifications. In the first Dr. C certified the claimant reached MMI on October 20, 2022, with a 13% IR. This certification considered and rated, among other conditions, vestibular disturbance, dizziness, tinnitus, and hearing loss, which are not part of the compensable injury. This certification is not adoptable.

In his alternate certification Dr. C certified the claimant reached MMI on May 26, 2020, with a 0% 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 placed the claimant in Diagnosis-Related Estimate Category I: Complaints or Symptoms for 0% impairment for the lumbar strain. Using Table 2, Mental Status Impairments and Table 3, Emotional or Behavioral Impairments, both on page 4/142 of the AMA Guides, Dr. C assigned 0% impairment. Dr. C's narrative report reflects he considered a lumbar strain, head contusion, head abrasion, mild traumatic brain injury, and concussion. However, Dr. C's narrative report shows he failed to consider and rate headaches, a condition that is part of the compensable injury.

On October 13, 2023, a letter of clarification was sent to Dr. C notifying him to consider and rate a lumbar strain, head contusion, and head abrasion. Dr. C responded on October 20, 2023, and stated the inclusion of these conditions did not change his May 26, 2020, date of MMI and assigned 0% IR. Dr. C also stated his response would include a revised report and Report of Medical Evaluation (DWC-69) with these conditions. Dr. C did not consider and rate the entire compensable injury.

Dr. C's certifications that the claimant reached MMI on May 26, 2020, with a 0% IR do not consider and rate the entire compensable injury. Accordingly, we reverse the ALJ's determination that the claimant reached MMI on May 26, 2020, with a 0% IR.

There is no certification in evidence that can be adopted. Consequently, we remand the issues of MMI and IR to the ALJ for further action consistent with this decision.

### **SUMMARY**

We affirm the ALJ's determinations that the compensable injury of (date of injury), extends to mild traumatic brain injury, head concussion, and headaches.

We affirm the ALJ's determination that the compensable injury of (date of injury), does not extend to post-concussion syndrome, vestibular disturbance, dizziness, hearing loss, tinnitus, endolymphatic hydrops (Meniere Disease), depression, or anxiety.

We reverse the ALJ's determination that the claimant reached MMI on May 26, 2020, and we remand the MMI issue to the ALJ for further action consistent with this decision.

We reverse the ALJ's determination that the claimant's IR is 0%, and we remand the IR issue to the ALJ for further action consistent with this decision.

### **REMAND INSTRUCTIONS**

Dr. C is the designated doctor in this case. On remand 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 notify the designated doctor that the compensable injury of (date of injury), extends to a low back strain, head contusion, head abrasion, mild traumatic brain injury, head concussion, and headaches, but does not extend to post-concussion syndrome, vestibular disturbance, dizziness, hearing loss, tinnitus, endolymphatic hydrops (Meniere Disease), depression, or anxiety. The ALJ is also to notify the designated doctor that the date of statutory MMI in this case is October 20, 2022.

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 October 20, 2022, 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 Appeals Panel Decision 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **ZNAT 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.**

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Carisa Space-Beam  
Appeals Judge

CONCUR:

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Cristina Beceiro  
Appeals Judge

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Margaret L. Turner  
Appeals Judge