

APPEAL NO. 240113  
FILED MARCH 7, 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 (CCH) was held on December 6, 2023, with the record closing on December 14, 2023, in (city), Texas, with (administrative law judge) presiding as the administrative law judge (ALJ). The ALJ resolved the disputed issue by deciding that good cause exists to relieve the respondent (claimant) from the effects of the Agreement signed on March 18, 2021. The appellant (carrier) appeals the ALJ's determination that good cause exists to relieve the claimant from the effects of the Agreement signed on March 18, 2021. The claimant responded, urging affirmance of the ALJ's determination of good cause.

DECISION

Reversed and rendered.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury), and was unrepresented when she entered into the agreement approved on March 18, 2021. In evidence is a Benefit Dispute Agreement (DWC-24) which was signed by the claimant on March 8, 2021. The DWC-24 reflects that the parties agreed the compensable injury of (date of injury), extends to the right wrist volar carpal ganglion cyst, but does not extend to left orbit fracture, right hand tendonitis, right wrist extensor carpi ulnaris tendon tear(s), right wrist carpal tunnel syndrome, right wrist mild ulnar neuritis, right wrist ulnar complex injury with extensor carpi ulnaris intrasubstance tear(s), or right wrist ulnar neuropathy; the claimant reached maximum medical improvement (MMI) on May 16, 2019, as certified by (Dr. W), the designated doctor appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division); and that the claimant's impairment rating (IR) is two percent as certified by Dr. W.

The claimant argued at the CCH that she should be relieved of the effects of the DWC-24 because she cannot read English and the ombudsman assisting her did not fully explain the agreement to her. Section 410.030(b) provides, in part, that if the claimant is not represented by an attorney, the agreement is binding on the claimant through the conclusion of all matters relating to the claim while the claim is pending before the Division, unless the Division for good cause relieves the claimant of the effect of the agreement. We have held that the appropriate test for the existence of good cause is that of ordinary prudence; that is, the degree of diligence as an ordinarily prudent person would have exercised under the same or similar circumstances. Appeals Panel Decision (APD) 042000, decided September 23, 2004. Whether good cause exists is a matter left up to the discretion of the ALJ, and the determination will

not be set aside unless the ALJ abused his discretion, i.e., acted without reference to any guiding rules or principles. APD 041692, decided August 31, 2004, citing *Morrow v. H.E.B., Inc.*, 714 S.W.2d 297 (Tex. 1986).

In his discussion of the evidence the ALJ noted that the agreement was sent to the claimant after the benefit review conference held on February 23, 2021, and the claimant had a sufficient amount of time to review and consider the agreement before signing it on March 8, 2021. The ALJ found that no fraud or misrepresentation was involved in procuring the agreement and the claimant was provided with sufficient time to review the agreement before she signed it on March 8, 2021. That finding is supported by sufficient evidence.

However, the ALJ determined that good cause exists to relieve the claimant from the effects of the Agreement signed on March 18, 2021, because the two percent IR assigned by Dr. W was the result of a misapplication of 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). The narrative report dated September 4, 2020, from Dr. W, indicated that impairment was assigned based on range of motion (ROM) measurements of the right wrist taken on May 16, 2019. Dr. W reported the ROM measurements as follows: flexion 50°, extension 54°, radial deviation 20°, and ulnar deviation 12°. Dr. W then stated that the right wrist ROM at the time of MMI yields a two percent whole person impairment per Figures 26-29, pages 3/36-3/38 of the AMA Guides.

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 be

applied in calculating the claimant's IR. See 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. Additionally, Figure 26 on page 3/36 of the AMA Guides provide that measurements of extension are to be rounded to the nearest 10°.

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. The Appeals Panel has previously held that rounding wrist ROM measurements to derive the correct upper extremity impairment requires medical judgment or discretion. See APD 220745, decided July 1, 2022; APD 160876, decided July 11, 2016; APD 132215, decided November 18, 2013; and APD 121194, decided September 6, 2012.

The calculation of the claimant's IR in this case requires rounding, which has been held to require medical judgment. Accordingly, the ALJ's finding that Dr. W's two percent IR was the result of a misapplication of the AMA Guides, on which he based his determination of good cause to relieve the claimant from the effects of the agreement signed on March 18, 2021, is not supported by the evidence. We reverse the ALJ's determination that good cause exists to relieve the claimant from the effects of the DWC-24 signed on March 18, 2021, and we render a new decision that there is no good cause for relieving the claimant of the effects of such agreement, and the DWC-24 signed on March 18, 2021, is final and binding pursuant to Section 410.030.

The true corporate name of the insurance carrier is **TECHNOLOGY INSURANCE COMPANY, INC.** and the name and address of its registered agent for service of process is

**UNITED AGENT GROUP INC.  
5444 WESTHEIMER ROAD, SUITE 1000  
HOUSTON, TEXAS 77056-5318.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Cristina Beceiro  
Appeals Judge

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Carisa Space-Beam  
Appeals Judge