

APPEAL NO. 240139  
FILED MARCH 21, 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 January 4, 2024, 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 bilateral median nerve neuropathy; (2) the appellant (claimant) reached maximum medical improvement (MMI) on September 15, 2021; and (3) the claimant's impairment rating (IR) is seven percent. The claimant appealed the ALJ's determinations of extent of injury, MMI, and IR. The respondent (carrier) responded to the claimant's appeal, urging affirmance of the determinations.

**DECISION**

Affirmed in part and reversed and rendered in part.

The parties stipulated, in part, that: (1) on (date of injury), the claimant sustained a compensable injury that extends to at least right elbow lateral epicondylitis and left elbow lateral epicondylitis; (2) the Texas Department of Insurance, Division of Workers' Compensation (Division) appointed (Dr. P) as designated doctor to determine extent of injury, MMI, and IR; and (3) the date of statutory MMI is April 19, 2023. The claimant, a painter, sustained a repetitive trauma injury to his elbows due to using a heavier spray paint gun during a new project.

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 bilateral median nerve neuropathy is supported by sufficient evidence and is affirmed.

**MMI**

The ALJ's determination that the claimant reached MMI on September 15, 2021, 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 that the claimant reached MMI on September 15, 2021, with a seven percent IR in accordance with the certification of (Dr. O), the carrier-selected required medical examination doctor. Dr. O examined the claimant on August 1, 2023, and assigned the seven percent IR based on the compensable conditions of right elbow lateral epicondylitis and left elbow lateral epicondylitis. Dr. O stated in his narrative report that on September 15, 2021, the claimant had surpassed the recommended guidelines, and it was determined at the claimant's visit on that date that he had a whole person impairment (WPI) of six percent for his right upper extremity (UE) and a one percent WPI for his left UE, which resulted in a total WPI of seven percent. The evidence indicates that the claimant was examined by (Dr. B), a treating doctor referral, on September 15, 2021, and Dr. O based his certification on this exam.

Dr. B assessed a seven percent IR based on the claimant's bilateral wrists and elbows range of motion (ROM) measurements on that 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). Dr. B correctly assessed a one percent UE impairment which converted to a one percent WPI based on the ROM measurements of the claimant's left wrist and elbow. For the right UE, Dr. B correctly assessed a seven percent UE impairment. He then converted the seven percent UE impairment to a six percent WPI. Combining the six percent WPI for the right UE with the one percent WPI for the left UE resulted in a total WPI of seven percent.

However, Dr. B made a mistake when he converted the right UE impairment of seven percent to a six percent WPI. According to Table 3, on page 3/20 of the AMA Guides, seven percent UE impairment converts to four percent WPI, not six percent WPI as assessed by Dr. B. Dr. O duplicated the same error in his narrative report.

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. Dr. O's assigned IR can be mathematically corrected based on the documented measurements for the bilateral wrists and elbows.

Combining four percent WPI for the right UE with the one percent WPI for the left UE results in a total five percent WPI, not seven percent as assigned by Dr. O.

The ALJ found that the preponderance of the other medical evidence is not contrary to the certification of Dr. O. After a mathematical correction, that finding is supported by the evidence. Accordingly, we reverse the ALJ's determination that the claimant's IR is seven percent, and we render a new decision that the claimant's IR is five percent, as mathematically corrected.

### **SUMMARY**

We affirm the ALJ's determination that the compensable injury of (date of injury), does not extend to bilateral median nerve neuropathy.

We affirm the ALJ's determination that the claimant reached MMI on September 15, 2021.

We reverse the ALJ's determination that the claimant's IR is seven percent, and we render a new decision that the claimant's IR is five percent, as mathematically corrected.

The true corporate name of the insurance carrier is **SERVICE LLOYDS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
211 EAST 7TH STREET, SUITE 620  
AUSTIN, TEXAS 78701-3218.**

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Cristina Beceiro  
Appeals Judge

CONCUR:

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Carisa Space-Beam  
Appeals Judge

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Margaret L. Turner  
Appeals Judge