

APPEAL NO. 240162
FILED MARCH 27, 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 3, 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 the following left shoulder conditions – joint derangement, rotator cuff tear, or rotator cuff arthropathy; (2) the appellant (claimant) reached maximum medical improvement (MMI) on July 20, 2022; and (3) the claimant's impairment rating (IR) is 5%. The claimant appealed, disputing the ALJ's determinations. The respondent (self-insured) responded, urging affirmance of the ALJ's 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), that extends to at least a left shoulder bicep tear; the designated doctor selected by the Texas Department of Insurance, Division of Workers' Compensation (Division) to determine extent of injury, MMI, IR, and return to work was (Dr. F); and the statutory date of MMI is April 24, 2024. The claimant was injured on (date of injury), while packing approximately 1,500 bags of food at a rapid pace.

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 the following left shoulder conditions – joint derangement, rotator cuff tear, or rotator cuff arthropathy is supported by sufficient evidence and is affirmed.

MMI

The ALJ's determination that the claimant reached MMI on July 20, 2022, 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 July 20, 2022, with a 5% IR in accordance with the certification of (Dr. V), the carrier-selected required medical examination doctor. Dr. V examined the claimant on July 12, 2023, and assigned 5% IR based on the compensable condition of a left shoulder bicep tear and 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. V's narrative report reflects the following left shoulder range of motion (ROM) measurements taken during his examination and their corresponding impairments: flexion 130° (3% upper extremity (UE) impairment), extension 40° (1% UE impairment), abduction 110° (3% UE impairment), adduction 10° (1% UE impairment), external rotation 70° (0% UE impairment), and internal rotation 50° (1% UE impairment). Dr. V calculated these impairments to 9% UE impairment, which he converted to 5% whole person impairment (WPI) using Table 3 on page 3/20 of the AMA Guides.

However, Dr. V made a mistake in calculating internal rotation UE impairment. Figure 44 on page 3/45 of the AMA Guides provides that 50° of internal rotation results in 2% UE impairment, not 1% UE impairment as assigned by Dr. V.

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. V's assigned IR can be mathematically corrected based on the documented measurements for the left shoulder.

Adding the UE impairments based on the left shoulder ROM measurements taken by Dr. V results in 10% UE impairment, which converts to 6% WPI, not 5% as assigned by Dr. V.

The ALJ found that the preponderance of the other medical evidence is not contrary to the certification of Dr. V. After a mathematical correction, that finding is supported by the evidence. Accordingly, we reverse the ALJ's determination that the claimant's IR is 5%, and we render a new decision that the claimant's IR is 6%, as mathematically corrected.

SUMMARY

We affirm the ALJ's determination that the compensable injury of (date of injury), does not extend to the following left shoulder conditions – joint derangement, rotator cuff tear, or rotator cuff arthropathy.

We affirm the ALJ's determination that the claimant reached MMI on July 20, 2022.

We reverse the ALJ's determination that the claimant's IR is 5%, and we render a new decision that the claimant's IR is 6%, as mathematically corrected.

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