

APPEAL NO. 240249
FILED APRIL 11, 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 17, 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 strains and sprains of the cervical, thoracic, and lumbar, lumbar intervertebral disc disorder at L5-S1, lumbar radicular syndrome, anxiety, depression, and post-traumatic stress disorder (PTSD); (2) the appellant (claimant) reached maximum medical improvement (MMI) on September 2, 2022; and (3) the claimant's impairment rating (IR) is zero percent.

The claimant appealed the ALJ's determinations. The respondent (carrier) responded, urging affirmance of the 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 at least the conditions accepted by the carrier of concussion, headache, and right elbow contusion; and (Dr. M) was appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division) as designated doctor on the issues of MMI, IR, and extent of injury. The claimant, a machine operator, was injured on (date of injury), when a forklift caused compressed cardboard boxes to fall on her. The boxes struck her left side and caused her to hit a metal bar with her right arm. She then fell on her back and neck and hit her head on the floor.

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 strains and sprains of the cervical, thoracic, and lumbar, lumbar intervertebral disc disorder at L5-S1, lumbar radicular syndrome, anxiety, depression, and PTSD is supported by sufficient evidence and is affirmed.

MMI AND 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 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 designated doctor, Dr. M, examined the claimant on February 24, 2023, and issued two alternate certifications that both determined the claimant had not reached MMI. In the first certification, Dr. M considered the accepted compensable conditions of a concussion with headache and right elbow contusion. In the second certification, he considered the accepted compensable conditions as well as the disputed conditions of strains and sprains of the cervical, thoracic, and lumbar, lumbar intervertebral disc disorder at L5-S1, and lumbar radicular syndrome. For both certifications, Dr. M explained that the claimant had not reached MMI because he agreed with (Dr. J), the neuropsychologist, that the claimant needed psychological intervention. The ALJ noted in his decision that this opinion was based on psychological deficits which have not been proven to be related to the compensable injury. The ALJ found that Dr. M's certifications are contrary to the preponderance of the other medical evidence. This finding is supported by sufficient evidence.

(Dr. B), the carrier-selected required medical examination doctor, examined the claimant on August 24, 2023, and issued two alternate certifications. In the first certification, Dr. B certified that the claimant reached MMI on June 23, 2022, with a zero percent IR based on the accepted compensable conditions of concussion, headache, and

right elbow contusion. Dr. B stated in his narrative report that these conditions had resolved by June 23, 2022. In the second certification, which was adopted by the ALJ, Dr. B certified that the claimant reached MMI on September 2, 2022, with a zero percent IR based on the accepted compensable conditions as well as strains and sprains of the cervical, thoracic, and lumbar, lumbar intervertebral disc disorder at L5-S1, and lumbar radicular syndrome. As we have affirmed the ALJ's determination that the compensable injury of (date of injury), does not extend to strains and sprains of the cervical, thoracic, and lumbar, lumbar intervertebral disc disorder at L5-S1, and lumbar radicular syndrome, this certification cannot be adopted. Therefore, we reverse the ALJ's determinations that the claimant reached MMI on September 2, 2022, with a zero percent IR.

Dr. B's first certification considered and rated the compensable injury in this case and is supported by the preponderance of the evidence. Therefore, we render a new decision that the claimant reached MMI on June 23, 2022, with a zero percent IR.

SUMMARY

We affirm the ALJ's determination that the compensable injury of (date of injury), does not extend to strains and sprains of the cervical, thoracic, and lumbar, lumbar intervertebral disc disorder at L5-S1, lumbar radicular syndrome, anxiety, depression, and PTSD.

We reverse the ALJ's determination that the claimant reached MMI on September 2, 2022, with a zero percent IR, and we render a new decision that the claimant reached MMI on June 23, 2022, with a zero percent IR.

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

**CT CORPORATION
1999 BRYAN STREET, SUITE 900
DALLAS, TEXAS 75201-3136.**

Cristina Beceiro
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge