

APPEAL NO. 240312  
FILED MAY 9, 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 January 31, 2024, in (city), Texas, with (administrative law judge) presiding as the administrative law judge (ALJ). The ALJ determined that the issues before him had been resolved by an agreement of the parties as follows: (1) the respondent (claimant) sustained a compensable injury on (date of injury), in the form of a right shoulder grade II acromioclavicular (AC) joint sprain, right shoulder rotator cuff strain, right shoulder contusion, and cervical sprain/strain; (2) the claimant reached maximum medical improvement (MMI) on November 13, 2023; (3) the claimant's impairment rating (IR) is four percent; and (4) the claimant had disability from December 6, 2022, through February 13, 2023; but the claimant did not have disability from February 14, 2023, through March 21, 2023. The appellant (carrier) appeals the ALJ's determinations of extent of injury, MMI, IR, and disability contending that they are so against the great weight of the evidence as to be clearly wrong and manifestly unjust. The appeal file does not contain a response from the claimant. That portion of the ALJ's determination that the compensable injury of (date of injury), extends to a right shoulder grade II AC joint sprain, right shoulder rotator cuff strain, right shoulder contusion, and cervical sprain/strain was not appealed and has become final pursuant to Section 410.169.

**DECISION**

Reversed and remanded.

The evidence reflects the claimant sustained a compensable injury on (date of injury), when she slipped and fell. The Benefit Review Conference (BRC) report in evidence reflects there were four disputed issues to be resolved at the CCH as follows: (1) Does the compensable injury of (date of injury), extend to right shoulder: AC joint sprain, impingement syndrome, cervical radiculopathy, sprain of rotator cuff capsule, unspecified injury to muscles and tendons of rotator cuff, segmental and somatic dysfunction, and other muscle spasms?; (2) Has the claimant reached MMI and, if so, on what date?; (3) If the claimant has reached MMI, what is the IR?; and (4) Did the claimant have disability from December 6, 2022, through March 31, 2023, resulting from the injury of (date of injury)? The parties represented at the CCH that an agreement had been reached on the issues currently in dispute. We note that Agreement No. 5 in the decision states the parties agreed that the claimant's date of statutory MMI is May 3, 2024. The record does not reflect that the parties agreed at the CCH to the date of statutory MMI in this case.

**EXTENT OF INJURY**

The decision and order states that the parties agreed to modify the extent-of-injury issue to decide the following conditions: right shoulder grade II AC joint sprain, right shoulder rotator cuff strain, right shoulder contusion, and cervical sprain/strain. A review of the record reflects that both parties agreed that the compensable injury of (date of injury), extends to a right shoulder grade II AC joint sprain, right shoulder rotator cuff strain, right shoulder contusion, and cervical sprain/strain. However, on appeal, the carrier contends that the ALJ failed to address right shoulder impingement syndrome, cervical radiculopathy, sprain of the rotator cuff capsule, segmental and somatic dysfunction of the thoracic region, and other muscle spasms which were conditions listed in the BRC report. In its appeal, the carrier states the decision accurately reflects the conditions agreed upon by both parties as compensable in this case.

The record reflects that the parties agreed that the segmental and somatic dysfunction listed in the BRC report referenced the thoracic region rather than the right shoulder. However, the record does not reflect whether the parties agreed to exclude the conditions of right shoulder impingement syndrome, cervical radiculopathy, sprain of the rotator cuff capsule, segmental and somatic dysfunction of the thoracic region, and other muscle spasms, from the issue or whether the parties agreed the compensable injury of (date of injury), did not extend to these conditions as alleged in the carrier's appeal. Accordingly, we reverse the ALJ's extent-of-injury determination as incomplete and remand the extent-of-injury issue to the ALJ to clarify whether the parties agreed to amend the extent-of-injury issue as stated in the decision or whether the parties agreed that the compensable injury of (date of injury), did not extend to the conditions of right shoulder impingement syndrome, cervical radiculopathy, sprain of the rotator cuff capsule, segmental and somatic dysfunction of the thoracic region, and other muscle spasms.

### **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 Texas Department of Insurance, Division of Workers' Compensation (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 record reflects that the parties agreed the Division appointed (Dr. D) as designated doctor to determine MMI, IR, and extent of the compensable injury. A review of the record reflects that the parties agreed that the claimant reached MMI on November 13, 2023, with a four percent IR as certified by Dr. D. In evidence are three alternate certifications from Dr. D that place the claimant at MMI on November 13, 2023, with a four percent IR. In the first scenario, Dr. D considered and rated only a right shoulder grade II AC joint sprain. In the second scenario, Dr. D considered and rated a right shoulder grade II AC joint sprain, cervical sprain, right shoulder AC joint sprain, impingement syndrome, subacromioclavicular/subdeltoid bursitis, glenohumeral joint effusion, rotator cuff capsule sprain, unspecified injury to muscles and tendons of the rotator cuff, other muscle spasms, thoracic segmental and somatic dysfunction, and cervical radiculopathy. In the third scenario, Dr. D considered and rated right shoulder grade II AC joint sprain in addition to cervical sprain, right shoulder AC joint sprain, rotator cuff capsule sprain, unspecified injury to muscles and tendons of rotator cuff, other muscle spasms, and thoracic segmental and somatic dysfunction. We note that none of the scenarios consider and rate the compensable injury as agreed to by the parties. As noted above, the extent-of-injury issue has been remanded to the ALJ for further action consistent with this decision. Accordingly, we also reverse the issues of MMI and IR and remand the issues of MMI and IR to the ALJ.

### **DISABILITY**

As noted above, we have reversed and remanded the extent-of-injury issue to the ALJ for further action consistent with this decision. Accordingly, we also reverse the ALJ's determination regarding the disability issue. Further, we note that the period of disability at issue was December 6, 2022, through March 31, 2023. The ALJ's determination of the disability issue as agreed by the parties was incomplete because it did not cover the entire period at issue. The decision fails to determine disability from the period of March 22, 2023, through March 31, 2023.

### **SUMMARY**

We reverse the ALJ's determination of extent of injury as being incomplete and remand to the ALJ for further action consistent with this decision.

We reverse the ALJ's determination that the claimant reached MMI on November 13, 2023, and 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 four percent and remand the IR issue to the ALJ for further action consistent with this decision.

We reverse the ALJ's determination that the claimant had disability from December 6, 2022, through February 13, 2023, but did not have disability from February 14, 2023, through March 21, 2023, and remand the disability issue to the ALJ for further action consistent with this decision.

### **REMAND INSTRUCTIONS**

On remand the ALJ is to clarify the extent-of-injury issue in dispute at the CCH. The ALJ is to make a finding that is supported by the evidence.

After making a determination regarding the extent-of-injury issue, the ALJ is to make a determination of MMI and IR that is supported by the evidence.

After making a determination regarding the extent-of-injury issue, the ALJ is to make a determination of disability that covers the entire period of disability in issue that is supported by the evidence.

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 **TRUCK INSURANCE EXCHANGE** 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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Margaret L. Turner  
Appeals Judge

CONCUR:

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Cristina Beceiro  
Appeals Judge

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Carisa Space-Beam  
Appeals Judge