

APPEAL NO. 240485  
FILED MAY 23, 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 March 7, 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 appellant (claimant) reached maximum medical improvement (MMI) on July 7, 2023; and (2) the claimant's impairment rating (IR) is three percent. The claimant appealed, disputing the ALJ's determinations of MMI and IR. The respondent (self-insured) responded, urging affirmance of the disputed MMI and IR determinations.

DECISION

Affirmed in part and reversed and remanded in part.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury), that consisted of a right wrist sprain, thoracic strain, and a right shoulder and upper arm strain, and the Texas Department of Insurance, Division of Workers' Compensation (Division) appointed (Dr. A) as the designated doctor for the issues of MMI and IR. The claimant testified she was injured on (date of injury), when the interior roof of the truck she was driving fell on her. The claimant testified she grabbed the plastic interior of the roof that fell with her right hand while she continued driving.

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).

**MMI**

The ALJ's determination that the claimant reached MMI on July 7, 2023, 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 found that the preponderance of the other medical evidence was not contrary to the report of Dr. A, the designated doctor, who certified that the claimant reached MMI on July 7, 2023, with a three percent IR. Dr. A examined the claimant on October 27, 2023, and considered and rated a sprain of the right wrist, strain of the thoracic region, and strain of the right shoulder and upper arm 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. A assessed zero percent for the claimant's right wrist based on range of motion (ROM) measurements and assessed three percent whole person impairment based on loss of ROM of the claimant's right shoulder. Dr. A assessed zero percent impairment for the thoracic strain by placing the claimant in Diagnosis-Related Estimate (DRE) Cervicothoracic Category I: Complaints or Symptoms of the AMA Guides.

Dr. A specifically stated in his narrative report that he was rating the thoracic strain. Dr. A noted that as of July 7, 2023, the claimant's treating doctor noted the claimant presented with all symptoms resolved. Dr. A opined that further material recovery is not reasonably anticipated with additional medical treatment after July 7, 2023. However, Dr. A placed the claimant in DRE Cervicothoracic Category I: Complaints or Symptoms and assessed zero percent IR.

In Appeals Panel Decision (APD) 051306-s, decided August 3, 2005, the Appeals Panel discussed the application of the AMA Guides in rating cervical, thoracic, and lumbar injuries and held as follows:

Applying the language from the bottom of page 3/95 of the AMA Guides, if the injury is primarily to the cervical spine the rating would be under part 3.3h, page 3/103 cervicothoracic spine impairment, if the injury was primarily to the thoracic area of the spine the rating would be under part 3.3i page 3/106 for thoracolumbar spine impairment and if the injury is primarily to the lumbar portion of the spine, the impairment would be under

part 3.3g page 3/101 lumbosacral spine impairment. Pursuant to part 3.3f, page 3/101, paragraph 8, if more than one spine region is impaired, the doctor is to determine the impairment of the other regions and combine the regional impairments using the Combined Values Chart to express the patients (sic) total spine impairment.

The claimant's spinal compensable injury is to the thoracic spine only and the AMA Guides do not provide for placement in DRE Cervicothoracic Category for the thoracic region, rather it provides for placement in the DRE Thoracolumbar Category. Dr. A failed to place the claimant in the correct spinal region for the thoracic strain; therefore, Dr. A's IR cannot be adopted. See APD 141367, decided August 28, 2014. We reverse the ALJ's determination that the claimant's IR is three percent because the IR does not comply with the AMA Guides for rating a thoracic spine injury and is not supported by the evidence.

There are two other certifications in evidence. (Dr. H), a referral from the claimant's treating doctor, examined the claimant on December 14, 2023, and certified that the claimant reached MMI on July 20, 2023, and assessed a three percent IR. However, the MMI date of July 7, 2023, has been affirmed. Accordingly, the certification from Dr. H cannot be adopted.

The other certification in evidence is from (Dr. D), the claimant's treating doctor. Dr. D examined the claimant on July 31, 2023, and certified that the claimant reached MMI on July 31, 2023, and had no permanent impairment. Dr. D considered and rated only a thoracic strain and sprain of the right wrist. This certification does not rate and consider a strain of the right shoulder and upper arm, which is part of the compensable injury. Additionally, the MMI date of July 7, 2023, has been affirmed. Accordingly, this certification cannot be adopted. There is no other certification in evidence. Accordingly, we remand the IR issue to the ALJ for further action consistent with this decision.

### **SUMMARY**

We affirm the ALJ's determination that the claimant reached MMI on July 7, 2023.

We reverse the ALJ's determination that the claimant's IR is three percent and remand the IR issue to the ALJ for further action consistent with this decision.

### **REMAND INSTRUCTIONS**

Dr. A is the designated doctor in this case. The ALJ is to determine if Dr. A is still qualified and available to be the designated doctor. If Dr. A is no longer qualified or

available to serve as the designated doctor, then another designated doctor is to be appointed to determine the claimant's IR.

The ALJ is to inform the designated doctor that the compensable injury of (date of injury), extends to a right wrist sprain, thoracic strain, and a right shoulder and upper arm strain.

The ALJ is to request the designated doctor to rate the entire compensable injury as of the date of MMI, which is July 7, 2023, in accordance with the AMA Guides and considering the medical record and the certifying examination.

The parties are to be provided with the designated doctor's new MMI and IR certification, as of the MMI date of July 7, 2023, and are to be allowed an opportunity to respond. The ALJ is then to make a determination on the claimant's IR for the (date of injury), compensable injury as of the MMI date of July 7, 2023.

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 APD 060721, decided June 12, 2006.

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).**

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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