

APPEAL NO. 240521  
FILED JUNE 12, 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 5, 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 respondent (claimant) reached maximum medical improvement (MMI) on September 14, 2023; and (2) the claimant's impairment rating (IR) is 22%. The appellant (carrier) appeals the ALJ's determinations of the MMI and IR. The appeal file does not contain a response from the claimant.

DECISION

Reversed and remanded.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury), in the form of a thoracic contusion, cervical spine sprain, cervical spine strain, lumbar sprain, lumbar strain, right shoulder sprain, right shoulder strain, left shoulder sprain, left shoulder strain, left ankle sprain, left foot sprain, and left ankle and foot strain; and the Texas Department of Insurance, Division of Workers' Compensation (Division) appointed (Dr. C) as the designated doctor for the issues of MMI and IR. The claimant testified that she was injured when she fell because her foot got caught in the carpet and cable from a dryer.

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 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. Rule 130.1(d)(1) states that a certification of MMI and assignment of an IR requires completion, signing, and submission of the Report of Medical Evaluation (DWC-69) and a narrative report.

Dr. C, the designated doctor appointed by the Division, initially examined the claimant on February 21, 2023, and certified that the claimant had not yet reached MMI but should do so on or about June 21, 2023. Dr. C subsequently examined the claimant on September 14, 2023, and certified that the claimant reached MMI on September 14, 2023, with a 22% IR.

The ALJ determined that the claimant reached MMI on September 14, 2023, with a 22% IR as certified by Dr. C. However, Dr. C did not sign the DWC-69. Rule 130.1(d)(1) provides that a certification of MMI and assignment of an IR for the compensable injury requires the "completion, signing, and submission of the [DWC-69] and a narrative report." See Appeals Panel Decision (APD) 100510, decided June 24, 2010, and APD 101734, decided January 27, 2011. Because the DWC-69 was not signed by Dr. C, it was error for the ALJ to adopt her certification. Consequently, we reverse the ALJ's determinations that the claimant's MMI date is September 14, 2023, and that the claimant's IR is 22%.

There are two other MMI/IR certifications in evidence. The first is a certification from (Dr. N), a doctor selected by the treating doctor to act in his place. Dr. N examined the claimant on December 4, 2023, and certified that the claimant reached MMI on October 26, 2023, with a 10% IR. In his narrative report, Dr. N stated he chose the MMI date based on a neuropsychological evaluation and testing performed on that date. Dr. N specifically assigned 0% for a head injury. A head injury has not yet been determined to be a part of the compensable injury. Dr. N's certification that the claimant reached MMI on October 26, 2023, with a 10% IR cannot be adopted because he considered a condition that has not yet been determined to be part of the compensable injury. See APD 140505, decided May 19, 2014.

The second certification is from (Dr. M), a carrier-selected required medical examination doctor. Dr. M examined the claimant on December 12, 2023. Dr. M certified that the claimant reached MMI on November 15, 2022, and assigned a 13% IR 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). In his narrative report, Dr. M considered and rated the compensable conditions of thoracic contusion, cervical spine sprain/strain, lumbar sprain/strain, right shoulder sprain/strain, left shoulder sprain/strain, left ankle sprain, and left foot sprain. In his discussion of the evidence, the

ALJ correctly notes that Dr. M failed to consider and rate the entire compensable injury. A review of the record reflects that Dr. M failed to consider and rate a left ankle and foot strain. Because Dr. M failed to consider and rate the entire compensable injury, his certification cannot be adopted.

As there is no MMI/IR certification in evidence that can be adopted, we remand the issues of MMI and IR to the ALJ for further action consistent with this decision.

### **SUMMARY**

We reverse the ALJ's determinations that the claimant's MMI date is September 14, 2023, and that the claimant's IR is 22%, and we remand the issues of MMI and IR to the ALJ for further action consistent with this decision.

### **REMAND INSTRUCTIONS**

Dr. C is the designated doctor in this case. The ALJ is to determine whether Dr. C is still qualified and available to be the designated doctor. If Dr. C 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 MMI and IR.

The ALJ is to inform the designated doctor that the compensable injury of (date of injury), extends to a thoracic contusion, cervical spine sprain, cervical spine strain, lumbar sprain, lumbar strain, right shoulder sprain, right shoulder strain, left shoulder sprain, left shoulder strain, left ankle sprain, left foot sprain, and left ankle and foot strain. The ALJ is to request the designated doctor to give an opinion on the claimant's MMI and rate the entire compensable injury in accordance with the AMA Guides considering the medical record and the certifying examination.

The parties are to be provided with the designated doctor's new MMI/IR certification and are to be allowed an opportunity to respond. The ALJ is then to make a determination on MMI and IR consistent with this decision.

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 **REPUBLIC FRANKLIN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM  
1999 BRYAN STREET, SUITE 900  
DALLAS, TEXAS 75201-4284.**

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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