

APPEAL NO. 240569  
FILED JUNE 20, 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 19, 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 bilateral hip trochanteric bursitis, L4-5 disc protrusion, or L5-S1 disc herniation; (2) the respondent (claimant) reached maximum medical improvement (MMI) on November 9, 2023; and (3) the claimant's impairment rating (IR) is 10%. The appellant (self-insured) appeals the ALJ's determination of the MMI date and the claimant's IR. The appeal file does not contain a response from the claimant. The ALJ's determination that the compensable injury does not extend to bilateral hip trochanteric bursitis, L4-5 disc protrusion, or L5-S1 disc herniation was not appealed and has become final pursuant to Section 410.169.

DECISION

Reversed and remanded.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury), in the form of at least a cervical strain/sprain and lumbar sprain/strain but not aggravation of C5-6 disc protrusion; (Dr. C) was appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division) to address extent of injury, MMI, and IR; and that the terms sprain and strain are used interchangeably for purposes of 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 ALJ found that the preponderance of the other medical evidence is not contrary to Dr. C's certification that the claimant reached MMI on November 9, 2023, with a 10% IR. The record indicates that the designated doctor, Dr. C, examined the claimant on November 9, 2023, and provided three alternate certifications. Two of Dr. C's certifications certify a November 9, 2023, date of MMI and assign a 10% IR, while a third certified the claimant reached MMI on May 15, 2023, with a 10% IR.

Dr. C certified that the claimant reached MMI on November 9, 2023, and assessed a 10% 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). The attached narrative states that for this certification, Dr. C considered and rated a lumbar sprain, cervical sprain, bilateral hip trochanteric bursitis, L4-5 disc protrusion, L5-S1 disc herniation, and aggravation of C5-6 disc protrusion. This certification considers and rates conditions that have been determined not to be part of the compensable injury and cannot be adopted.

In another certification based on the examination of November 9, 2023, Dr. C again certified that the claimant reached MMI on November 9, 2023, and assessed a 10% IR. The attached narrative reflects that for this certification Dr. C considered and rated a lumbar sprain, a cervical sprain, an L4-5 disc protrusion, an L5-S1 disc protrusion, and aggravation of a C5-6 disc protrusion. This certification considers and rates conditions that have been determined not to be part of the compensable injury and cannot be adopted.

Neither of the certifications from Dr. C that certified the claimant reached MMI on November 9, 2023, considered and rated only the compensable injury. It was an error for the ALJ to adopt the certification from Dr. C that certified the claimant reached MMI on November 9, 2023, with a 10% IR. Accordingly, we reverse the ALJ's determination that the claimant reached MMI on November 9, 2023, with a 10% IR.

There are five other certifications in evidence.

As previously mentioned, Dr. C's third certification based on his November 9, 2023, exam, certified that the claimant reached MMI on May 15, 2023, and assessed a 10% IR. The attached narrative states that for this certification, Dr. C considered and rated a sprain of the lumbar spine and a sprain of the cervical spine.

Dr. C previously examined the claimant on June 1, 2023, and certified that the claimant reached MMI on May 15, 2023, and assigned a 0% IR considering a lumbar sprain/strain and a cervical sprain/strain.

Additionally, in evidence there are three certifications from (Dr. M), a post-designated doctor required medical examination doctor. Dr. M examined the claimant on January 11, 2024. Two of the certifications consider and rate conditions that have been determined not to be part of the compensable injury. However, there is one certification from Dr. M that considered and rated only a cervical sprain/strain and a lumbar sprain/strain. In that certification, Dr. M certified that the claimant reached MMI on August 15, 2022, and assessed a 0% IR.

Since there is more than one certification of MMI and IR in evidence that can be adopted, we do not consider it appropriate to render a decision on the issues of MMI and IR in this case. Therefore, we remand the issues of MMI and IR to the ALJ for further action consistent with this decision.

### **SUMMARY**

We reverse the ALJ's determination that the claimant reached MMI on November 9, 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 10%, and we remand the IR issue to the ALJ for further action consistent with this decision.

### **REMAND INSTRUCTIONS**

On remand, the ALJ is to make findings of fact, conclusions of law, and a decision on the issues of MMI and IR that are based on the evidence and 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 Appeals Panel Decision 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