

APPEAL NO. 180032
FILED FEBRUARY 26, 2018

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 November 16, 2017, 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), extends to left leg sprain/strain and deep vein thrombosis; (2) the appellant/cross-respondent (claimant) reached maximum medical improvement (MMI) on May 27, 2016; (3) the claimant had no permanent impairment as a result of the (date of injury), compensable injury; and (4) the first certification of MMI and assigned impairment rating (IR) from (Dr. G) on May 27, 2016, became final under Section 408.123 and 28 TEX. ADMIN. CODE § 130.12 (Rule 130.12).

The claimant appealed the ALJ's finding of fact that the left leg sprain/strain and deep vein thrombosis were not caused, accelerated, enhanced, or worsened by the compensable injury of (date of injury). Additionally, the claimant appealed the ALJ's determinations of MMI, IR, and finality. The claimant further contends that he timely responded to the 10-day letter sent explaining his absence at the CCH. The respondent/cross-appellant (carrier) responded, stating the response to the 10-day letter was not sent to the right facsimile number. Additionally, the carrier urged affirmance of the ALJ's determinations of finality, MMI, and IR.

The carrier filed a separate document requesting a clerical correction regarding the extent of the compensable injury. The carrier argued that the ALJ's finding of fact and discussion of the extent of the compensable injury conflict with the conclusion of law and determination regarding the extent of the injury and requested a clerical correction. The claimant responded, arguing that the carrier did not properly appeal the issue because it is requesting a clerical correction.

DECISION

Reversed and remanded.

The attorneys for both the claimant and the carrier stipulated that the claimant sustained a compensable injury on (date of injury), in the form of a great toe contusion. On November 16, 2017, a CCH was called to order to hear the disputed issues of extent of injury, finality, MMI, and IR. The carrier was present and the claimant's attorney was present. However, the claimant's attorney announced on the record that he expected the claimant to attend the CCH. The claimant's attorney stated that when he attempted

to call the claimant by telephone there was no response and he had no knowledge of why the claimant was not in attendance at the CCH.

Due to the claimant's nonattendance at the CCH, the ALJ caused a 10-day letter dated November 16, 2017, to be sent to the claimant. The ALJ closed the record on December 4, 2017, and issued a decision on December 6, 2017, that was unfavorable to the claimant on the issues of finality, MMI, and IR. As raised in the carrier's cross-appeal, the ALJ's finding of fact regarding the extent of the compensable injury conflicts with her conclusion of law and decision. In her decision, the ALJ indicated that the claimant had failed to respond to the 10-day letter.

In Appeals Panel Decision (APD) 042634, decided November 29, 2004, the Appeals Panel noted that the purpose of the 10-day letter process is to give the non-appearing party the opportunity to meaningfully participate in the dispute resolution process. In APD 020273, decided March 29, 2002, the claimant made a number of factual allegations in her appeal regarding good cause for failing to attend the CCH and her attempts to respond to the 10-day letter, and the Appeals Panel stated that it was not in a position to evaluate the credibility of the claimant in regard to those matters and for such reason, remanded the case to the ALJ to take evidence concerning the claimant's allegations and to permit the claimant to present evidence on the merits of her claim at the CCH on remand.

In this case, the claimant makes factual allegations that, if true, could constitute a basis for good cause for the claimant's failure to attend the CCH on November 16, 2017. Furthermore, the claimant alleges in his appeal that he did respond to the 10-day letter in writing on November 22, 2017, filing the response to two different Texas Department of Insurance, Division of Workers' Compensation (Division) facsimile receivers and requesting resetting of the CCH. As in APD 020273, *supra*, the case is remanded to the ALJ to take evidence concerning the claimant's allegations and to permit the parties to present evidence on the merits of the claim at the CCH on remand. Additionally, the ALJ's finding of fact regarding the extent-of-injury issues conflicts with the conclusion of law and decision regarding the extent of injury.

We accordingly reverse the ALJ's determinations that the compensable injury of extends to left leg sprain/strain and deep vein thrombosis; the claimant reached MMI on May 27, 2016; the claimant had no permanent impairment as a result of the (date of injury), compensable injury; and the first certification of MMI and assigned IR from Dr. G on May 27, 2016, became final under Section 408.123 and Rule 130.12 and we remand this case to the ALJ to allow the claimant an opportunity to participate in the dispute resolution process, and present evidence if he wishes to do so on all of the issues.

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 **GREENWICH 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.**

Margaret L. Turner
Appeals Judge

CONCUR:

K. Eugene Kraft
Appeals Judge

Carisa Space-Beam
Appeals Judge