

APPEAL NO. 180591
FILED APRIL 30, 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 20, 2017, with the record closing on February 15, 2018, 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) did have disability from July 29, 2016, through June 23, 2017, as a result of the compensable injury sustained on (date of injury); (2) the claimant reached maximum medical improvement (MMI) on June 23, 2017; and (3) good cause does not exist to relieve the appellant (carrier) from the effects of the Benefit Dispute Agreement (DWC-24) signed on June 22, 2017. The carrier appeals the ALJ's determinations of the MMI date, disability and good cause to relieve the carrier from the effects of the DWC-24 signed on June 22, 2017. The appeal file does not contain a response from the claimant to the carrier's appeal.

DECISION

Affirmed in part and reversed and remanded in part.

The parties stipulated that: (1) on (date of injury), the claimant sustained a compensable injury to his lumbar spine and bilateral knees; (2) the Texas Department of Insurance, Division of Workers' Compensation (Division) selected (Dr. L) as designated doctor; (3) the claimant's impairment rating (IR) is five percent as certified by either the designated doctor or the treating referral doctor; and (4) the date of statutory MMI fell on June 23, 2017, in this case. The claimant testified that he was injured while involved in an altercation with an inmate.

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).

DISABILITY

The ALJ's determination that the claimant did have disability from July 29, 2016, through June 23, 2017, is supported by sufficient evidence and is affirmed.

GOOD CAUSE TO RELIEVE CARRIER OF EFFECTS OF DWC-24

The ALJ's determination that good cause does not exist to relieve the carrier from the effects of the DWC-24 signed on June 22, 2017, is supported by sufficient evidence and is affirmed.

MMI

On March 17, 2017, Dr. L examined the claimant and certified that the claimant reached MMI on July 28, 2016, with an IR of five percent, 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. L noted that the claimant's knees showed full range of motion and that no muscle weakness or neurovascular abnormalities were noted. Dr. L assessed zero percent impairment for the claimant's left knee; and zero percent impairment for the claimant's right knee. Dr. L additionally assessed five percent for the claimant's lumbar spine, placing the claimant in Diagnosis Related Estimate (DRE) Lumbosacral Category II: Minor Impairment of the AMA Guides.

On May 10, 2017, the claimant's treating doctor referral, (Dr. H), examined the claimant and opined that the claimant had not yet reached clinical MMI. Dr. H noted the claimant in all medical probability will likely improve with continued treatment. Dr. H noted that the claimant was expected to reach MMI on or about August 10, 2017.

In evidence is a DWC-24 in which the parties agreed that "the claimant did not reach MMI on July 28, 2016." Both the claimant and the carrier's representative signed the DWC-24 on June 12, 2017, and a Division representative approved the DWC-24 on June 22, 2017.

On August 31, 2017, Dr. H certified in an amended Report of Medical Evaluation (DWC-69) that the claimant reached MMI on June 21, 2017, with a five percent IR and in an amended certification of the same date certified that the claimant reached MMI on June 23, 2017, with a five percent IR.

After the CCH, the ALJ sent a Presiding Officer's Directive (POD) to Order Designated Doctor Exam to Dr. L. The ALJ informed Dr. L, the designated doctor, that a DWC-24 was signed by both parties and was approved by the Division on June 22, 2017, and it was determined that the claimant had not reached MMI for the compensable injury sustained on (date of injury), to the lumbar spine and bilateral knees. The ALJ then informed Dr. L that because an agreement was signed addressing MMI and IR, the claimant cannot be determined to have clinically reached MMI before June 22, 2017, and that statutory MMI is June 23, 2017. Dr. L responded to the POD

and certified that the claimant reached MMI on June 23, 2017, and assessed an IR of five percent for the compensable injury using the AMA Guides.

A review of the record reflects that the parties agreed that the claimant had not reached MMI “on July 28, 2016,” specifically, not as of the date the Division approved the DWC-24, June 22, 2017. Accordingly, it was error for the ALJ to inform Dr. L that the claimant cannot be determined to have clinically reached MMI before June 22, 2017. Therefore, we reverse the ALJ’s determination that the claimant reached MMI on June 23, 2017, with a five percent IR as certified by the designated doctor. We remand the MMI issue to the ALJ for further action consistent with this decision.

SUMMARY

We affirm the ALJ’s determination that the claimant did have disability from July 29, 2016, through June 23, 2017, as a result of the compensable injury of (date of injury).

We affirm the ALJ’s determination that good cause does not exist to relieve the carrier from the effects of the DWC-24 signed by the Division on June 22, 2017.

We reverse the ALJ’s determination that the claimant reached MMI on June 23, 2017, and remand the MMI issue to the ALJ for further action consistent with this decision.

REMAND INSTRUCTIONS

Dr. L is the designated doctor in this case. On remand the ALJ is to determine whether Dr. L is still qualified and available to be the designated doctor. If Dr. L 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 date for the (date of injury), compensable injury.

The ALJ is to request the designated doctor to give an opinion on the claimant’s date of MMI considering the entire compensable injury. The ALJ is to inform the designated doctor that the claimant’s IR is five percent as previously certified by both the designated doctor and the treating doctor referral and as stipulated by the parties. Further, the ALJ is to inform the designated doctor that the date of MMI cannot be earlier than July 29, 2016, and that MMI can be no later than the statutory date of June 23, 2017.

The parties are to be provided with the ALJ’s letter to the designated doctor and the designated doctor’s response. The parties are to be allowed an opportunity to

respond. The ALJ is then to make a determination on the claimant's MMI date for the (date of injury), compensable injury.

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 **FIRST LIBERTY INSURANCE CORPORATION** 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.**

Margaret L. Turner
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Carisa Space-Beam
Appeals Judge