

APPEAL NO. 180839
FILED JUNE 4, 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 was held on March 1, 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 compensable injury of (date of injury), does not extend to multilevel cervical spondylosis with areas of acquired spinal stenosis, foraminal encroachment superimposed on congenital spinal stenosis, or disc bulges at C3-4, C4-5, C5-6, and C6-7; the appellant (claimant) reached maximum medical improvement (MMI) on June 16, 2016; (3) the claimant's impairment rating (IR) is five percent; and (4) the claimant is not entitled to supplemental income benefits (SIBs) for the first, second, or third quarters. The claimant appealed, disputing all of the ALJ's determinations. The respondent (self-insured) responded, urging affirmance of the ALJ's determinations.

DECISION

Affirmed in part, reformed 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 includes cervical strain, thoracic strain, bilateral shoulder strain, and a right knee strain; the date of statutory MMI is April 3, 2018; the dates of the first quarter of SIBs began on April 27, 2017, and continued through July 26, 2017, and the qualifying period ran from January 13 through April 13, 2017; the dates of the second quarter of SIBs began on July 27, 2017, and continued through October 25, 2017, and the qualifying period ran from April 14 through July 13, 2017; the dates of the third quarter of SIBs began on October 26, 2017, and continued through January 24, 2018, and the qualifying period ran from July 14 through October 12, 2017; and during the qualifying periods of the first, second, and third quarters of SIBs the number of weekly job searches required for the claimant's county of residence is five. The claimant testified he was injured in a motor vehicle accident.

We note that the name of the self-insured's registered agent for service of process is stated as (Dr. C) on the self-insured's information sheet. The decision incorrectly states the registered agent's name as (Dr. C). We reform the decision to state the name of the self-insured's registered agent for service of process as (Dr. C), to reflect the correct name and conform to the evidence.

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).

EXTENT OF INJURY, MMI, AND IR

The ALJ's determination that the compensable injury of (date of injury), does not extend to multilevel cervical spondylosis with areas of acquired spinal stenosis, foraminal encroachment superimposed on congenital spinal stenosis, or disc bulges at C3-4, C4-5, C5-6, and C6-7 is supported by sufficient evidence and is affirmed.

The ALJ's determination that the claimant reached MMI on June 16, 2016, is supported by sufficient evidence and is affirmed.

The ALJ's determination that the claimant's IR is five percent is supported by sufficient evidence and is affirmed.

SIBs

Section 410.168 provides that an ALJ's decision contain findings of fact and conclusions of law, a determination of whether benefits are due, and an award of benefits due. 28 TEX. ADMIN. CODE § 142.16 (Rule 142.16) provides that an ALJ's decision shall be in writing and include findings of fact, conclusions of law, and a determination of whether benefits are due and if so, an award of benefits due.

The ALJ states in Conclusion of Law No. 6, the Decision, and the summary paragraph on the first page of the decision that the claimant is not entitled to SIBs for the first, second, and third quarters. The ALJ made no findings of fact regarding the claimant's entitlement to first, second, and third quarter SIBs. Because the ALJ's decision contains no findings of fact regarding the issue of entitlement to first, second and third quarter SIBs, which was an issue properly before her to resolve, it does not comply with Section 410.168 and Rule 142.16. We therefore reverse the ALJ's determination that the claimant is not entitled to SIBs for the first, second, or third quarters, and we remand the issue of SIBs entitlement for the first, second, and third quarters for the ALJ to make findings of fact regarding those quarters of SIBs. See Appeals Panel Decision (APD) 132339, decided December 12, 2013.

SUMMARY

We affirm the ALJ's determination that the compensable injury of (date of injury), does not extend to multilevel cervical spondylosis with areas of acquired spinal

stenosis, foraminal encroachment superimposed on congenital spinal stenosis, or disc bulges at C3-4, C4-5, C5-6, and C6-7.

We affirm the ALJ's determination that the claimant reached MMI on June 16, 2016.

We affirm the ALJ's determination that the claimant's IR is five percent.

We reform the decision to state the name of the self-insured's registered agent for service of process as (Dr.C), to reflect the correct name and conform to the evidence.

We reverse the ALJ's determination that the claimant is not entitled to SIBs for the first, second, or third quarters, and we remand the issue of SIBs entitlement for the first, second, and third quarters for further action consistent with this decision.

REMAND INSTRUCTIONS

On remand the ALJ is to make findings of fact, corresponding conclusions of law, and a decision regarding whether the claimant is entitled to SIBs for the first, second, or third quarters. No new evidence is to be taken.

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 Texas Department of Insurance, Division of Workers' Compensation, 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).

Carisa Space-Beam
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge