

APPEAL NO. 181036
FILED JUNE 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 March 29, 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 C3-4 disc protrusion/herniation, C4-5 disc protrusion/herniation, C5-6 disc protrusion/herniation, C6-7 disc protrusion/herniation, or cervical radiculopathy; (2) the first certification of maximum medical improvement (MMI) and impairment rating (IR) assigned by (Dr. P) on March 3, 2017, became final under Section 408.123 and 28 TEX. ADMIN. CODE § 130.12 (Rule 130.12); (3) the appellant (claimant) reached MMI on March 3, 2017; (4) the claimant has no permanent impairment; and (5) the claimant did not have disability from June 20, 2017, to the date of the CCH, from an injury sustained on (date of injury). The claimant appealed, disputing the ALJ's determinations of extent of injury, finality, MMI, IR, and disability. The respondent (carrier) responded, urging affirmance of all of the disputed determinations.

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 right shoulder strain, right hip strain, and right hand contusion. The claimant testified that he was injured while riding in the back of an ambulance with a patient when the ambulance clipped a car while making a wide turn.

We note that the Decision and Order lists that three ALJ exhibits were admitted but the record reflects that only two ALJ exhibits were admitted.

EXTENT OF INJURY

The ALJ determined that the compensable injury of (date of injury), did not extend to the disputed conditions. The ALJ noted in his discussion of the evidence that the extent-of-injury conditions in dispute required expert evidence to resolve whether they are causally related to or are a part of the compensable injury. When discussing the evidence, the ALJ stated that the carrier offered a report from required medical examination doctor, (Dr. B), who examined the claimant on January 3, 2018, and that Dr. B concluded the disputed conditions were not related to the compensable injury, were pre-existing, and degenerative. However, a review of the record reflects that there was no report from Dr. B in evidence. Because the ALJ references a report from a

medical expert that is not in evidence, we reverse the ALJ's determination that the compensable injury of (date of injury), does not extend to C3-4 disc protrusion/herniation, C4-5 disc protrusion/herniation, C5-6 disc protrusion/herniation, C6-7 disc protrusion/herniation, or cervical radiculopathy and remand the extent-of-injury issue to the ALJ for further action consistent with this decision.

FINALITY

Section 408.123(e) provides that, except as otherwise provided by Section 408.123, an employee's first valid certification of MMI and first valid assignment of an IR is final if the certification or assignment is not disputed before the 91st day after the date written notification of the certification or assignment is provided to the employee and the carrier by verifiable means. Rule 130.12(b) provides, in part, that the first MMI/IR certification must be disputed within 90 days of delivery of written notice through verifiable means, including IRs related to extent-of-injury disputes. The notice must contain a copy of a valid Report of Medical Evaluation (DWC-69), as described in Rule 130.12(c).

Section 408.123(f) provides in part:

(f) An employee's first certification of [MMI] or assignment of an [IR] may be disputed after the period described by Subsection (e) if:

(1) compelling medical evidence exists of:

(A) a significant error by the certifying doctor in applying the appropriate American Medical Association guidelines or in calculating the [IR];

(B) a clearly mistaken diagnosis or a previously undiagnosed medical condition; or

(C) improper or inadequate treatment of the injury before the date of the certification or assignment that would render the certification or assignment invalid.

The claimant argued, in part, that the cervical conditions in dispute had been undiagnosed or misdiagnosed and prevent Dr. P's certification of MMI and assigned IR on March 3, 2017, from becoming final. Given that we have reversed and remanded the extent-of-injury issue, we also reverse and remand the finality issue to the ALJ for further action consistent with this decision.

MMI/IR

The ALJ determined that the first certification of MMI and IR assigned by Dr. P on March 3, 2017, became final under Section 408.123 and Rule 130.12. The ALJ then determined that the claimant reached MMI on March 3, 2017, and that the claimant has no permanent impairment in accordance with Dr. P's certification. Given that we have reversed and remanded the extent-of-injury issue and the finality issue, we also reverse the ALJ's determination that the claimant reached MMI on March 3, 2017, and that the claimant has no permanent impairment and remand the MMI and IR issues to the ALJ for further action consistent with this decision.

DISABILITY

The ALJ's determination that the claimant did not have disability from June 20, 2017, to the date of the CCH was based, in part, on his determination that the compensable injury did not extend to the disputed conditions. Given that we have reversed and remanded the extent-of-injury issue to the ALJ, we also reverse the ALJ's determination that the claimant did not have disability from June 20, 2017, to the date of the CCH and remand the disability issue to the ALJ for further action consistent with this decision.

SUMMARY

We reverse the ALJ's determination that the compensable injury of (date of injury), does not extend to C3-4 disc protrusion/herniation, C4-5 disc protrusion/herniation, C5-6 disc protrusion/herniation, C6-7 disc protrusion/herniation, or cervical radiculopathy and we remand the extent-of-injury issue to the ALJ for further action consistent with this decision.

We reverse the ALJ's determination that the first certification of MMI and IR assigned by Dr. P on March 3, 2017, became final under Section 408.123 and Rule 130.12 and remand the finality issue to the ALJ for further action consistent with this decision.

We reverse the ALJ's determination that the claimant reached MMI on March 3, 2017, and that the claimant has no permanent impairment and remand the MMI and IR issues to the ALJ for further action consistent with this decision.

We reverse the ALJ's determination that the claimant did not have disability from June 20, 2017, to the date of the CCH, from an injury sustained on (date of injury), and remand the disability issue to the ALJ for further action consistent with this decision.

REMAND INSTRUCTIONS

On remand the ALJ is to decide the disputed issues of extent of injury, finality, MMI, IR and disability on the documentary evidence and testimony admitted at the CCH. The ALJ should place the report of Dr. B in the record, if it exists, and if it was offered and admitted into evidence at the CCH.

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 Appeals Panel Decision 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **ARCH INDEMNITY INSURANCE COMPANY** 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.**

Margaret L. Turner
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Carisa Space-Beam
Appeals Judge