

APPEAL NO. 181044
FILED JUNE 5, 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 December 11, 2017, with the record closing on March 28, 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 sustained on (date of injury), extends to mild to moderate spinal canal stenosis, circumferential disc bulge, ligamentum flavum thickening and facet arthropathy at L1-2 and L2-3, severe spinal canal stenosis, moderate to severe left thickening, facet hypertrophy and total effacement of the thecal sac at L3-4, severe spinal canal stenosis, severe bilateral neural foraminal stenosis, complete total effacement of the thecal sac, profound circumferential disc bulge and advanced ligamentum flavum thickening at L4-5, bilateral foraminal narrowing at exit of the nerve roots at L3-4 and L4-5, acute right-sided sciatica, right foot drop, and lumbar radiculopathy; (2) the respondent (claimant) has not reached maximum medical improvement (MMI); and (3) (Dr. C) was not properly appointed as the designated doctor in accordance with Section 408.0041 and 28 TEX. ADMIN. CODE § 127.5 (Rule 127.5). The appellant (self-insured) appeals the ALJ's determinations of extent of injury and MMI. The self-insured contends that the claimant did not present sufficient evidence of a causal connection to establish the disputed conditions were part of the compensable injury. The self-insured further contends that the claimant reached MMI on January 18, 2017, with an impairment rating (IR) of five percent. The claimant responded, urging affirmance of the disputed extent of injury and MMI determinations. The ALJ's determination that Dr. C was not properly appointed as the designated doctor in accordance with Section 408.0041 and Rule 127.5 was not appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed as reformed in part and reversed and rendered in part.

The parties stipulated, in part, that on (date of injury), the claimant sustained a compensable injury, at least in the form of a lumbar sprain and strain. The claimant testified that he injured his back while loading a table and chairs onto a flatbed trailer.

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).

The ALJ finds in Finding of Fact No. 5 that a Presiding Officer's Directive was issued by the ALJ and a new designated doctor was requested to address the date of MMI and IR. The Presiding Officer's Directive to Order Designated Doctor Exam was in evidence and reflects that a new designated doctor was requested to address extent of injury in addition to MMI and IR. We reform Finding of Fact No. 5 to state that a Presiding Officer's Directive was issued by the ALJ and a new designated doctor was requested to address the date of MMI, IR, and extent of injury to conform to the evidence.

The evidence reflects that after the ALJ's Presiding Officer's Directive was issued, (Dr. D) was appointed as designated doctor. The ALJ finds in Finding of Fact No. 8 that for only the disputed conditions, Dr. D certified the claimant reached MMI on January 18, 2017, with an assigned IR of five percent. However, the evidence reflects that Dr. D certified that the claimant reached MMI on January 18, 2017, with an assigned IR of five percent when only the accepted conditions of lumbar sprain/strain were considered. Accordingly, we reform Finding of Fact No. 8 to state that for only the undisputed conditions, Dr. D certified that the claimant reached MMI on January 18, 2017, with an assigned IR of five percent to conform to the evidence.

EXTENT OF INJURY

The ALJ's determination that the compensable injury sustained on (date of injury), extends to mild to moderate spinal canal stenosis, circumferential disc bulge, ligamentum flavum thickening and facet arthropathy at L1-2 and L2-3, severe spinal canal stenosis, moderate to severe left thickening, facet hypertrophy and total effacement of the thecal sac at L3-4, severe spinal canal stenosis, severe bilateral neural foraminal stenosis, complete total effacement of the thecal sac, profound circumferential disc bulge and advanced ligamentum flavum thickening at L4-5, bilateral foraminal narrowing at exit of the nerve roots at L3-4 and L4-5, acute right-sided sciatica, right foot drop, and lumbar radiculopathy is supported by sufficient evidence and is affirmed.

MMI/IR

The ALJ's determination that the claimant has not reached MMI as certified by Dr. D is supported by sufficient evidence and is affirmed.

The ALJ found that Dr. D's certification that the claimant has not reached MMI is not contrary to the preponderance of the other medical evidence. That finding is

supported by sufficient evidence and is affirmed. However, the ALJ failed to make a conclusion of law and decision on the IR issue. Accordingly, we reverse the ALJ's decision as being incomplete and render a new decision that because the claimant has not reached MMI, an IR cannot be assigned.

SUMMARY

We reform Finding of Fact No. 5 to state that a Presiding Officer's Directive was issued by the ALJ and a new designated doctor was requested to address the date of MMI, IR, and extent of injury to conform to the evidence.

We reform Finding of Fact No. 8 to state that for only the undisputed conditions, Dr. D certified that the claimant reached MMI on January 18, 2017, with an assigned IR of five percent to conform to the evidence.

We affirm the ALJ's determination that the compensable injury sustained on (date of injury), extends to mild to moderate spinal canal stenosis, circumferential disc bulge, ligamentum flavum thickening and facet arthropathy at L1-2 and L2-3, severe spinal canal stenosis, moderate to severe left thickening, facet hypertrophy and total effacement of the thecal sac at L3-4, severe spinal canal stenosis, severe bilateral neural foraminal stenosis, complete total effacement of the thecal sac, profound circumferential disc bulge and advanced ligamentum flavum thickening at L4-5, bilateral foraminal narrowing at exit of the nerve roots at L3-4 and L4-5, acute right-sided sciatica, right foot drop, and lumbar radiculopathy.

We affirm the ALJ's determination that the claimant has not reached MMI as certified by Dr. D.

We reverse the ALJ's decision as being incomplete and render a new decision that because the claimant has not reached MMI, an IR cannot be assigned.

The true corporate name of the insurance carrier is **STATE OFFICE OF RISK MANAGEMENT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

For service in person the address is:

**STEPHEN S. VOLLBRECHT, EXECUTIVE DIRECTOR
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WILLIAM P. CLEMENTS, JR. STATE OFFICE BUILDING, 6TH FLOOR
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Margaret L. Turner
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Carisa Space-Beam
Appeals Judge