

APPEAL NO. 181056
FILED JULY 6, 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 6, 2018, with the record closing on March 23, 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), extends to lumbar facet strain at L3-4 and L4-5 and right sacroiliac joint strain; (2) the compensable injury of (date of injury), does not extend to cervical strain, cervical herniation at C4-5, lumbar herniation at L3-4 and L4-5, left shoulder partial rotator cuff tear, hearing loss, right 4th middle phalanx fracture, or post-traumatic stress disorder (PTSD); (3) the respondent/cross-appellant (claimant) had disability resulting from the compensable injury from September 19 through November 9, 2016; and (4) the claimant did not have disability resulting from the compensable injury for any period after November 9, 2016.

The appellant/cross-respondent (carrier) appealed, disputing that portion of the ALJ's extent of injury and disability determinations that were favorable to the claimant. The claimant responded, urging affirmance of that portion of the ALJ's determinations. The claimant also cross-appealed, disputing that portion of the ALJ's extent of injury and disability determinations that were not favorable to her. The carrier responded, urging affirmance of that portion of the ALJ's determinations.

DECISION

Affirmed in part and reversed and remanded in part.

The claimant testified that she was injured after an explosion occurred at her place of work. The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury), and that the carrier has accepted lumbar contusion as a component of the compensable injury.

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

That portion of the ALJ's determination that the compensable injury of (date of injury), extends to lumbar facet strain at L3-4 and L4-5 and right sacroiliac joint strain but does not extend to cervical strain, cervical herniation at C4-5, lumbar herniation at L3-4 and L4-5, left shoulder partial rotator cuff tear, right 4th middle phalanx fracture, or PTSD is supported by sufficient evidence and is affirmed.

In his Discussion the ALJ noted the following regarding the claimed condition of hearing loss:

[Dr. B] opined that "[t]he sudden changes in pressure associated with a blast is known to damage the ear drum" and that "[t]his is most likely the cause of [the claimant's] hearing loss." Outside the initial medical records taken on the day of the date of injury and the day after, there is a lack of documentation of hearing loss in the medical records. There was no audio testing done as documentation that [the] [c]laimant actually has hearing loss. [Dr. B's] expert opinion without more documentation lacks persuasiveness.

However, in evidence are two separate audiogram results, the first dated September 8, 2016, and the second dated September 20, 2016. We note the evidence contains documentation stating an audiogram was conducted on (date of injury), the date of injury. Also in evidence is a progress note from Gulf Coast Occupational Medicine dated September 20, 2016, noting that "[r]epeat audio shows . . . worsening in both ears." The ALJ's statement that there was no audio testing done as documentation that the claimant actually has hearing loss is a misstatement of the evidence in this case, which we view as a material misstatement of fact. Accordingly, we reverse that portion of the ALJ's determination that the compensable injury of (date of injury), does not extend to hearing loss and we remand the issue of whether the compensable injury extends to hearing loss to the ALJ for further action consistent with this decision.

DISABILITY

Because we have reversed a portion of the ALJ's extent-of-injury determination, we also reverse the ALJ's determinations that the claimant had disability from September 19 through November 9, 2016, but the claimant did not have disability for any period after November 9, 2016, and we remand the issue of whether the claimant had disability resulting from the (date of injury), compensable injury to the ALJ for further action consistent with this decision.

SUMMARY

We affirm that portion of the ALJ's determination that the compensable injury of (date of injury), extends to lumbar facet strain at L3-4 and L4-5 and right sacroiliac joint strain but does not extend to cervical strain, cervical herniation at C4-5, lumbar herniation at L3-4 and L4-5, left shoulder partial rotator cuff tear, right 4th middle phalanx fracture, or PTSD.

We reverse that portion of the ALJ's determination that the compensable injury of (date of injury), does not extend to hearing loss and we remand the issue of whether the compensable injury extends to hearing loss to the ALJ for further action consistent with this decision.

We reverse the ALJ's determinations that the claimant had disability from September 19 through November 9, 2016, but the claimant did not have disability for any period after November 9, 2016, and we remand the issue of whether the claimant had disability resulting from the (date of injury), compensable injury to the ALJ for further action consistent with this decision

REMAND INSTRUCTIONS

On remand the ALJ is to correct his misstatement of the evidence regarding the medical records in evidence. The ALJ shall consider all of the evidence and make a determination of whether the compensable injury of (date of injury), extends to hearing loss and whether the claimant had disability resulting from the (date of injury), compensable injury and if so for what periods.

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 **NEW HAMPSHIRE 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 78701-3218.**

Carisa Space-Beam
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge