

APPEAL NO. 181235  
FILED JULY 20, 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 April 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), does not extend to C5-6 and C6-7 disc protrusions; (2) the appellant (claimant) reached maximum medical improvement (MMI) on March 6, 2017; (3) the claimant's impairment rating (IR) is zero percent; and (4) the claimant did not have disability resulting from the compensable injury from June 21, 2017, through November 30, 2017. The claimant appealed, disputing the ALJ's determinations of the extent of the injury, MMI, IR, and disability. The respondent (self-insured) responded, urging affirmance of the disputed extent of injury, MMI, IR, and disability determinations.

DECISION

Affirmed in part and reversed and remanded in part.

The parties stipulated, in part, that the self-insured accepted a right shoulder strain, left shoulder strain, cervical strain, and lumbar strain as components of the compensable injury and that the Texas Department of Insurance, Division of Workers' Compensation (Division) appointed (Dr. F) as the designated doctor for the purposes of MMI, IR, extent of injury, disability, and return to work.<sup>1</sup> The claimant testified that she was injured when lifting a crate from the trunk of her motor vehicle.

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

The ALJ's determination that the compensable injury does not extend to C5-6 and C6-7 disc protrusions is supported by sufficient evidence and is affirmed.

---

<sup>1</sup> We note that stipulation 1.D. mistakenly references maximum medical impairment rating rather than maximum medical improvement.

## **MMI**

The ALJ's determination that the claimant reached MMI on March 6, 2017, is supported by sufficient evidence and is affirmed.

## **IR**

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

## **DISABILITY**

The Benefit Review Conference Report reflects that the disputed disability issue was as follows: Did the claimant have disability resulting from the compensable injury, from June 21, 2017, through November 30, 2017? The claimant contends, in part, in her appeal that the ALJ did not address the correct disability issue in the decision and order. A review of the record reflects that at the CCH the parties agreed to modify the time period of dispute in the disability issue. The parties agreed that the disability issue should be modified to read as follows: Did the claimant have disability resulting from the compensable injury, from June 21, 2017, through the date of the CCH?

That portion of the ALJ's determination that the claimant did not have disability resulting from the compensable injury from June 21, 2017, through November 30, 2017, is supported by sufficient evidence and is affirmed.

However, the ALJ failed to make a determination of disability for December 1, 2017, through the date of the CCH, April 23, 2018. Accordingly, we reverse the ALJ's determination as being incomplete and remand the disability issue to the ALJ to make a determination of disability for December 1, 2017, through April 23, 2018, the date of the CCH.

## **SUMMARY**

We affirm the ALJ's determination that the compensable injury does not extend to C5-6 and C6-7 disc protrusions.

We affirm the ALJ's determination that the claimant reached MMI on March 6, 2017.

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

We affirm that portion of the ALJ's determination that the claimant did not have disability resulting from the compensable injury from June 21, 2017, through November 30, 2017.

We reverse the ALJ's disability determination as being incomplete and remand to the ALJ to determine whether the claimant had disability resulting from the compensable injury from December 1, 2017, through April 23, 2018, the date of the CCH.

### **REMAND INSTRUCTIONS**

On remand the ALJ should make a determination of whether the claimant had disability resulting from the compensable injury from December 1, 2017, through April 23, 2018, which is supported by the evidence.

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 **HOUSTON INDEPENDENT SCHOOL DISTRICT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**RICHARD A. CARRANZA, SUPERINTENDENT  
4400 WEST 18TH STREET  
HOUSTON, TEXAS 77092-8501.**

---

Margaret L. Turner  
Appeals Judge

CONCUR:

---

Veronica L. Ruberto  
Appeals Judge

---

Carisa Space-Beam  
Appeals Judge