

APPEAL NO. 181285  
FILED JULY 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 May 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 the L5-S1 disc bulge with decreased disc height and signal, ligamentous hypertrophy and facet joint arthropathy, aggravation of the right hip osteoarthritis, aggravation of lumbar degenerative disc disease, lumbar radiculopathy, spondylosis, or a Pars fracture; and (2) the appellant's (claimant) impairment rating (IR) is five percent. The claimant appealed, disputing the ALJ's determinations of extent of injury and IR. The respondent (carrier) responded, urging affirmance of the disputed extent of injury and IR determinations.

DECISION

Affirmed in part, reversed and rendered in part, and reversed and remanded in part.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury); the compensable injury extends to at least a lumbar sprain/strain; the Texas Department of Insurance, Division of Workers' Compensation (Division) appointed (Dr. B) as the designated doctor for the purposes of maximum medical improvement (MMI), IR, disability, and extent of injury; and that the claimant reached MMI on the statutory date of May 16, 2014, as certified by Dr. B and the post-designated doctor required medical examination doctor, (Dr. H). The claimant testified that he was injured when trying to pull up a fence.

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), does not extend to the L5-S1 disc bulge with decreased disc height and signal, ligamentous hypertrophy and facet joint arthropathy, aggravation of the right hip osteoarthritis, aggravation of lumbar degenerative disc disease, lumbar radiculopathy, or a Pars fracture is supported by sufficient evidence and is affirmed.

The extent-of-injury issue reported in the Benefit Review Conference Report is as follows:

Does the compensable injury of (date of injury), extend to the L5-S1 disc bulge with decreased disc height and signal, ligamentous hypertrophy, and facet joint arthropathy, aggravation of the right hip osteoarthritis, aggravation of lumbar degenerative disc disease, and lumbar radiculopathy?

At the CCH the parties agreed on the record to modify the extent-of-injury issue to add two additional conditions: spondylitis and Pars fracture. In her decision and order, the ALJ mistakenly listed the two conditions as spondylosis and Pars fracture. The parties did not agree to add or litigate the extent-of-injury condition of spondylosis. The ALJ exceeded the scope of the disputed extent-of-injury issue before her. Accordingly, we reverse the extent-of-injury determination and render a new decision by striking the condition of spondylosis.

Additionally the ALJ failed to make a determination on the condition of spondylitis which was a disputed condition before her to determine. Accordingly, we reverse the extent-of-injury issue as being incomplete and remand to the ALJ to decide whether or not the compensable injury of (date of injury), extends to spondylitis.

## **IR**

We have reversed and remanded a portion of the extent-of-injury issue. Accordingly, we reverse the ALJ's determination that the claimant's IR is five percent and remand 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), does not extend to the L5-S1 disc bulge with decreased disc height and signal, ligamentous hypertrophy and facet joint arthropathy, aggravation of the right hip osteoarthritis, aggravation of lumbar degenerative disc disease, lumbar radiculopathy, or a Pars fracture.

We reverse the ALJ's determination as exceeding the scope of the extent-of-injury issue and render a new decision by striking the ALJ's determination that the compensable injury of (date of injury), does not extend to spondylosis.

We reverse the ALJ's extent-of-injury determination as being incomplete and remand to the ALJ to determine whether the compensable injury of (date of injury), extends to spondylitis.

We reverse the ALJ's determination that the claimant's IR is five percent and remand to the ALJ for further action consistent with this decision.

### **REMAND INSTRUCTIONS**

On remand the ALJ is to make a determination of whether the compensable injury of (date of injury), extends to spondylitis.

After making a determination of whether the compensable injury of (date of injury), extends to spondylitis, the ALJ is then to make a determination of IR for the (date of injury), compensable injury.

Dr. B is the designated doctor in this case. The ALJ is to determine whether Dr. B is still qualified and available to be the designated doctor. If Dr. B is no longer qualified or available to serve as the designated doctor, then another designated doctor is to be appointed to determine the claimant's IR.

If necessary, the ALJ is to inform the designated doctor that the compensable injury of (date of injury), extends to a lumbar sprain/strain but does not extend to the L5-S1 disc bulge with decreased disc height and signal, ligamentous hypertrophy and facet joint arthropathy, aggravation of the right hip osteoarthritis, aggravation of lumbar degenerative disc disease, lumbar radiculopathy, or a Pars fracture. The ALJ is to inform the designated doctor of her determination regarding spondylitis and that the date of MMI is May 16, 2014. The ALJ is to request the designated doctor to rate the entire compensable injury in accordance with the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000) (AMA Guides) considering the medical record and the certifying examination as of the May 16, 2014, MMI date.

The parties are to be provided with the designated doctor's new IR certification and are to be allowed an opportunity to respond. The ALJ is then to make a determination on IR consistent with this decision.

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 **TRAVELERS INDEMNITY COMPANY OF CONNECTICUT** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
d/b/a CSC-LAWYERS INCORPORATING SERVICE CO.  
211 EAST 7TH STREET, SUITE 620  
AUSTIN, TEXAS 78701-3218.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Veronica L. Ruberto  
Appeals Judge

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Carisa Space-Beam  
Appeals Judge