

APPEAL NO. 181376
FILED AUGUST 8, 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 May 15, 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 a left knee lateral meniscus tear, spondylolisthesis at C3-4, C4-5, herniated nucleus pulposus (HNP) at C6-7, sub-deltoid bursitis of the left shoulder, or a disc protrusion at L5-S1; (2) the appellant/cross-respondent (claimant) reached maximum medical improvement (MMI) on May 12, 2017; and (3) the claimant's impairment rating (IR) is two percent.

The claimant appealed the ALJ's determinations of extent of injury, MMI, and IR. The claimant contends that the compensable injury extends to the disputed conditions and that she has not yet reached MMI. The claimant also contends that the ALJ should not have made a finding of the date of statutory MMI. The appeal file does not contain a response from the respondent/cross-appellant (carrier) to the claimant's appeal.

The carrier cross-appealed contending the ALJ omitted the condition of spondylolisthesis at C5-6 in the extent-of-injury issue and failed to make a finding of fact, conclusion of law, or decision on this condition. The appeal file does not contain a response from the claimant to the carrier's request for review.

DECISION

Affirmed in part and reversed and remanded in part.

The parties stipulated, in part, that on (date of injury), the claimant sustained a compensable injury in the form of a cervical sprain/strain, lumbar sprain/strain, left shoulder sprain/strain, bilateral hip sprain, and left knee sprain and that the current Texas Department of Insurance, Division of Workers' Compensation (Division)-selected designated doctor to determine MMI, IR, and extent of injury was (Dr. H). The claimant testified that she was injured when she slipped and fell at work.

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 a left knee lateral meniscus tear, spondylolisthesis at C3-4, C4-5, HNP at C6-7, sub-deltoid bursitis of the left shoulder, or a disc protrusion at L5-S1 is supported by sufficient evidence and is affirmed.

The Benefit Review Conference (BRC) Report in evidence also listed the condition of spondylolisthesis at C5-6 in the disputed extent-of-injury issue. A review of the record reflects the parties agreed that the condition of spondylolisthesis at C5-6 was one of the conditions disputed in the extent-of-injury issue before the ALJ to resolve. The carrier correctly notes in its appeal that the parties actually litigated whether the compensable injury of (date of injury), extends to spondylolisthesis at C5-6. The ALJ omitted that condition from the extent-of-injury issue listed in the decision and order. The ALJ failed to make findings of fact, conclusions of law, or a decision regarding whether the compensable injury of (date of injury), extends to spondylolisthesis at C5-6. Section 410.168 provides that an ALJ's decision contain findings of fact and conclusions of law, a determination of whether benefits are due, and an award of benefits due. Accordingly, we reverse the ALJ's extent-of-injury determination as being incomplete and remand to the ALJ to make a finding of fact, conclusion of law, and decision on whether the compensable injury of (date of injury), extends to spondylolisthesis at C5-6.

MMI/IR

The claimant contends in her appeal that it was error for the ALJ to make a finding of fact regarding the date of statutory MMI. We note that MMI was a specific issue before the ALJ to resolve. Accordingly, it was not error for the ALJ to address the date of statutory MMI. However, given that the extent-of-injury issue has been reversed and remanded to the ALJ to make a determination consistent with this decision, we reverse the ALJ's determinations that the claimant reached MMI on May 12, 2017, and the claimant's IR is two percent and we remand the issues of MMI and IR to the ALJ to make a determination 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 a left knee lateral meniscus tear, spondylolisthesis at C3-4, C4-5, HNP at C6-7, sub-deltoid bursitis of the left shoulder, or a disc protrusion at L5-S1.

We reverse the ALJ's extent-of-injury determination as being incomplete and remand to the ALJ to make a determination of whether the compensable injury of (date of injury), extends to spondylolisthesis at C5-6.

We reverse the ALJ's determination that the claimant reached MMI on May 12, 2017, and remand the MMI issue to the ALJ.

We reverse the ALJ's determination that the claimant's IR is two percent and remand the IR issue to the ALJ.

REMAND INSTRUCTIONS

On remand the ALJ is to make a determination on the compensability of the disputed condition of spondylolisthesis at C5-6.

Dr. H is the designated doctor in this case. On remand the ALJ is to determine whether Dr. H is still qualified and available to be the designated doctor. If Dr. H 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 MMI and IR for the (date of injury), compensable injury.

After determining the extent of the compensable injury, the ALJ is to then make a determination of MMI and IR considering the entire compensable injury. If a new certification or letter of clarification is necessary, the ALJ is to inform the designated doctor of the conditions which are part of the compensable injury. The parties are to be provided with the ALJ's letter to the designated doctor, the designated doctor's response, and are to be allowed an opportunity to respond. The ALJ is to make determinations of MMI and IR 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 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 **INDEMNITY INSURANCE COMPANY OF NORTH AMERICA** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
1999 BRYAN STREET, SUITE 900
DALLAS, TEXAS 75201-3136.**

Margaret L. Turner
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Carisa Space-Beam
Appeals Judge