

APPEAL NO. 181379  
FILED JULY 31, 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 March 26, 2018,<sup>1</sup> with the record closing on May 10, 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 cervical sprain, lumbar sprain, left shoulder sprain or strain, thoracic sprain, left knee contusion, 4 mm disc protrusion at C6-7, 2 mm disc protrusion at L4-5, or 4 mm disc bulge at L5-S1 with grade I spondylolisthesis; (2) the appellant (claimant) reached maximum medical improvement (MMI) on April 6, 2017; and (3) the claimant's impairment rating (IR) is zero percent. The claimant appealed, disputing the ALJ's determinations of extent of injury, MMI, and IR. The respondent (carrier) responded, urging affirmance of the disputed extent of injury, MMI, and IR determinations.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated, in part, that on (date of injury), the claimant sustained a compensable injury and that the compensable injury extends to a left knee contusion and acute, mildly comminuted but non-displaced posterior right 9th through 12th rib fractures. The claimant testified that he was injured when he fell.

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

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<sup>1</sup> We note that the Decision and Order states the hearing was held on February 8, 2018, but Texas Department of Insurance, Division of Workers' Compensation (Division) records indicate although a CCH was scheduled for February 8, 2018, a continuance was granted and the record was never opened on that date.

That portion of the ALJ's determination that the compensable injury does not extend to a cervical sprain, lumbar sprain, left shoulder sprain or strain, thoracic sprain, 4 mm disc protrusion at C6-7, 2 mm disc protrusion at L4-5, or 4 mm disc bulge at L5-S1 with grade I spondylolisthesis is supported by sufficient evidence and is affirmed.

Section 410.166 provides, in part, that an oral stipulation or agreement of the parties that is preserved in the record is final and binding. The parties stipulated at the CCH that the compensable injury extends to a left knee contusion. However, the ALJ mistakenly determined that the compensable injury does not extend to a left knee contusion. A review of the record reflects that the parties agreed at the CCH that the compensable injury extends to a left knee contusion. Accordingly, we reverse that portion of the ALJ's extent-of-injury determination that the compensable injury of (date of injury), does not extend to a left knee contusion and render a new decision that the compensable injury of (date of injury), does extend to a left knee contusion.

### **MMI/IR**

The ALJ issued a Presiding Officer's Directive to Order Designated Doctor Exam on April 2, 2018, and notified the designated doctor that the compensable injury for the purpose of determining MMI and IR is a left knee contusion and acute, mildly comminuted but non-displaced posterior right 9th through 12th rib fractures. The ALJ found in Finding of Fact No. 4 that on April 2, 2018, the ALJ ordered a re-examination of the claimant by a designated doctor assigned to determine MMI and IR, and the Division redesignated from (Dr. H) to (Dr. J). The finding was not appealed. Dr. J examined the claimant on April 25, 2018, and certified that the claimant reached MMI on April 6, 2017, with a zero percent IR, using 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). In his narrative report dated April 25, 2018, Dr. J considered and rated a left knee contusion and fractured right ribs 9 through 12. The ALJ's determination that the claimant reached MMI on April 6, 2017, with a zero percent IR is supported by sufficient evidence and is affirmed.

### **SUMMARY**

We affirm that portion of the ALJ's determination that the compensable injury does not extend to a cervical sprain, lumbar sprain, left shoulder sprain or strain, thoracic sprain, 4 mm disc protrusion at C6-7, 2 mm disc protrusion at L4-5, or 4 mm disc bulge at L5-S1 with grade I spondylolisthesis.

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

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

We reverse that portion of the ALJ's determination that the compensable injury of (date of injury), does not extend to a left knee contusion and render a new decision that the compensable injury of (date of injury), extends to a left knee contusion.

The true corporate name of the insurance carrier is **MARKEL INSURANCE COMPANY** 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.**

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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