

APPEAL NO. 181419  
FILED OCTOBER 1, 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 December 5, 2016, with the record closing on May 8, 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 loss of consciousness, chest contusion, mood disorders, anxiety, and panic attacks; (2) the compensable injury of (date of injury), does not extend to C5-6 radiculopathy or damage to the white matter of the brain; (3) the respondent's (claimant) date of maximum medical improvement (MMI) is the statutory MMI date of September 5, 2014; and (4) the claimant's impairment rating (IR) is 15%. The appellant (carrier) appealed the ALJ's extent-of-injury determination in favor of the claimant as well as the ALJ's IR determination. The carrier also contended that the ALJ abused his discretion in denying the carrier's request to reconvene the CCH. The appeal file does not contain a response from the claimant to the carrier's appeal.

The ALJ's determinations that the compensable injury of (date of injury), does not extend to C5-6 radiculopathy or damage to the white matter of the brain and that the claimant's date of MMI is the statutory MMI date of September 5, 2014, have not been appealed and have become final pursuant to Section 410.169.

DECISION

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

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury), in the form of facial contusions/abrasions and a cervical sprain/strain, and that the claimant reached MMI on the statutory MMI date of September 5, 2014. The claimant testified he was injured when he was assaulted by intoxicated coworkers.

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).

## **CLERICAL CORRECTION**

We note that the decision and order does not contain a conclusion of law regarding MMI. Although the parties stipulated at the CCH that the claimant reached MMI on the statutory MMI date of September 5, 2014, the issue of MMI was not withdrawn. 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. 28 TEX. ADMIN. CODE § 142.16 (Rule 142.16) provides that an ALJ's decision shall be in writing and include findings of fact, conclusions of law, and a determination of whether benefits are due and if so, an award of benefits due. Accordingly, we reform the ALJ's decision by adding Conclusion of Law No. 5 to state the following: the claimant reached MMI on the statutory MMI date of September 5, 2014.

## **ABUSE OF DISCRETION**

The carrier contended that the ALJ abused his discretion in denying its request to reconvene the CCH due to the delay in the case and to allow testimony from (Dr. B) on the MMI/IR certifications. Records in evidence show that the ALJ noted Dr. B's report clearly outlined his rationale and ultimate conclusion regarding the claimant's date of MMI and IR. The ALJ denied the carrier's request but allowed 10 business days for each side to offer any additional written argument relative to Dr. B's report, which was admitted into evidence.

Rulings on continuances are reviewed under an abuse-of-discretion standard and the Appeals Panel will not disturb an ALJ's ruling on a continuance absent an abuse of discretion. *Hernandez v. Hernandez*, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ). In determining whether there has been an abuse of discretion, the Appeals Panel looks to see whether the ALJ acted without reference to any guiding rules or principles. Appeals Panel Decision (APD) 043000, decided January 12, 2005; APD 121647, decided October 24, 2012; *Morrow v. H.E.B., Inc.*, 714 S.W.2d 297 (Tex. 1986). We hold that under the circumstances of this case the ALJ did not abuse his discretion in denying the carrier's request to reconvene the CCH.

## **EXTENT OF INJURY**

That portion of the ALJ's determination that the compensable injury of (date of injury), extends to loss of consciousness, chest contusion, mood disorders, anxiety, and panic attacks is supported by sufficient evidence and is affirmed.

The extent-of-injury issue as stated on the Benefit Review Conference Report and as agreed to by the parties at the CCH included the condition of a traumatic brain injury. However, the ALJ made no findings of fact, conclusions of law, or a decision as to whether the compensable injury of (date of injury), extends to a traumatic brain injury.

Because the ALJ failed to make a determination on whether the compensable injury extended to a traumatic brain injury, which was a condition properly before him to determine, the ALJ's decision is incomplete. See APD 150510, decided April 21, 2015; APD 162262, decided January 10, 2017; APD 181349, decided August 15, 2018; see *also* Section 410.168 and Rule 142.16. Accordingly, we reverse the ALJ's decision as being incomplete and remand the issue of whether the compensable injury of (date of injury), extends to a traumatic brain injury to the ALJ for further action consistent with this decision.

## **IR**

Because we have reversed the ALJ's decision as incomplete and remanded the case for the ALJ to determine whether the compensable injury of (date of injury), extends to a traumatic brain injury, we also reverse the ALJ's determination that the claimant's IR is 15% and remand the issue of the claimant's IR to the ALJ for further action consistent with this decision.

## **SUMMARY**

We reform the ALJ's decision by adding Conclusion of Law No. 5 to state the following: the claimant reached MMI on the statutory MMI date of September 5, 2014.

We affirm that portion of the ALJ's determination that the compensable injury of (date of injury), extends to loss of consciousness, chest contusion, mood disorders, anxiety, and panic attacks.

We reverse the ALJ's decision as incomplete and remand the issue of whether the compensable injury of (date of injury), extends to a traumatic brain injury to the ALJ for further action consistent with this decision.

We reverse the ALJ's determination that the claimant's IR is 15% and we remand the issue of the claimant's IR to the ALJ for further action consistent with this decision.

## **REMAND INSTRUCTIONS**

On remand the ALJ is to make findings of fact, conclusions of law, and a decision as to whether the compensable injury of (date of injury), extends to a traumatic brain injury. The ALJ is then to make findings of fact, conclusions of law, and a decision on the claimant's IR.

(Dr. MB) is the most recently appointed designated doctor in this case. If necessary on remand the ALJ is to determine whether Dr. MB is still qualified and available to be the designated doctor. If Dr. MB 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 for the (date of injury), compensable injury. The ALJ is to inform the designated doctor that the claimant reached MMI on the statutory MMI date of September 5, 2014, as stipulated to by the parties. The parties are to be provided with any new MMI/IR certification from the designated doctor and are to be allowed an opportunity to respond.

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 APD 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **LIBERTY INSURANCE CORPORATION** 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.**

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Carisa Space-Beam  
Appeals Judge

CONCUR:

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Veronica L. Ruberto  
Appeals Judge

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Margaret L. Turner  
Appeals Judge