

APPEAL NO. 181529

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A prior contested case hearing (CCH) was held on October 8, 2015, in (city), Texas, with (administrative law judge) presiding as the administrative law judge (ALJ). ALJ (ALJ) resolved the disputed issues by deciding that: (1) the compensable injury of (date of injury), extends to a C5-6 herniated disc, a thoracic sprain/strain, a lumbar sprain/strain, and a laceration and fracture of the left fifth finger; (2) the appellant (claimant) did not have disability from (date of injury), and continuing through the date of the CCH; (3) the claimant had not yet reached maximum medical improvement (MMI); and (4) because the claimant had not reached MMI, there was no impairment rating (IR). Respondent 1 (carrier) appealed the extent of injury, MMI and IR determinations. ALJ (ALJ)'s determination that the claimant did not have disability from (date of injury), and continuing through the date of the CCH was not appealed and became final pursuant to Section 410.169. In APD 152240, decided January 20, 2016, the Appeals Panel remanded the case for reconstruction of the record because the recording of the CCH was incomplete. The Appeals Panel remanded ALJ (ALJ)'s determination on the issues of extent of injury, MMI and IR. Also, the Appeals Panel noted that the disability determination was not appealed and that determination became final pursuant to Section 410.169.

Subsequently, ALJ (ALJ) held a CCH on remand on June 23, 2016; however, prior to issuing a Decision and Order in that case, ALJ (ALJ) ceased to be employed with the Texas Department of Insurance, Division of Workers' Compensation (Division) and the case was reassigned to another ALJ. This case was reassigned to ALJ (ALJ) to listen to the recording of the CCH on remand, review the evidence, and write a decision to resolve the issues in dispute. ALJ (ALJ) determined that the second recording by ALJ (ALJ) was also incomplete and that he would resolve the extent of injury, MMI, IR and disability issues. A prehearing was held on October 30, 2017, and ALJ (ALJ) informed the parties that the June 23, 2016, recording on remand by ALJ (ALJ) was incomplete. Also, ALJ (ALJ) informed the parties that because the Appeals Panel remanded the case for reconstruction of the record, he would make a determination on all the disputed issues, which included extent of injury, MMI, IR and disability. The carrier objected to the disability issue being re-litigated because the disability determination was not appealed and had become final as a matter of law.

A CCH on remand was reset and held on February 23, 2018, in (city), Texas, with ALJ (ALJ) presiding as the ALJ on the disputed issues of extent of injury, MMI, IR and disability. ALJ (ALJ) resolved the disputed issues by deciding that: (1) the compensable injury of (date of injury), extends to a lumbar strain, laceration of the left

fifth finger and fracture of the left fifth finger; (2) the compensable injury of (date of injury), does not extend to a C5-6 herniated disc, thoracic sprain or strain, or lumbar sprain; (3) the claimant reached MMI on August 12, 2014, with a six percent IR; and (4) the claimant did not have disability resulting from the compensable injury sustained on (date of injury), during the period from (date of injury), through the date of the CCH on February 23, 2018. We note that ALJ (ALJ) incorrectly referenced the date of the compensable injury as (date of injury), rather than (date of injury), throughout the decision.

The claimant appealed that portion of the extent-of-injury determination that was not favorable to him, as well as the MMI, IR and disability determinations. Also, the claimant asserts that ALJ (ALJ) “went well beyond his authority when he refused to reconstruct the CCH record from the existing exhibits provided by both parties. . . .”

The carrier responded, urging affirmance of ALJ (ALJ)’s determinations. Also, the carrier states that the prior ALJ determined that the claimant did not suffer any period of disability, and that the disability determination was not appealed and became final as a matter of law.

We note that the appeal file does not contain a response from respondent 2 (subclaimant). Also, ALJ (ALJ)’s determination that the compensable injury of (date of injury), extends to a lumbar strain, laceration of the left fifth finger, and fracture of the left fifth finger has not been appealed and has become final pursuant to Section 410.169.

DECISION

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

Stipulation and ALJ’s exhibits reformed

With regard to the date of the compensable injury, the parties stipulated and the evidence in the record supports that the claimant sustained a compensable injury on (date of injury). We note that ALJ (ALJ) mistakenly references the date of the compensable injury as (date of injury), rather than (date of injury), throughout the decision. Accordingly, we reform the decision to correctly identify the date of the compensable injury as (date of injury), throughout the decision.

With regard to the exhibits portion of the ALJ’s decision, the ALJ states that ALJ-1 “and” ALJ-4 were admitted into evidence; however, the record reflects ALJ-1 “through” ALJ-4 were admitted into evidence at the CCH. Accordingly, we reform the decision to correctly identify ALJ-1 through ALJ-4 were admitted into evidence.

Furthermore, we note that the “Official Notice” portion of the ALJ’s decision incorrectly references Appeals Panel Decision (APD) “152200” rather than APD “152240” and Docket Number “(DWC Number” rather than “DWC Number.)”

ALJ’s determination

On (date of injury), the claimant was unloading windows from a truck, when a stack of windows fell on him. The parties stipulated, in part, that the compensable injury extends to a cervical sprain and a fracture of the left fifth finger, (Dr. M) was the last designated doctor properly appointed by the Division to address extent of injury, and (Dr. E) was the last designated doctor properly appointed by the Division to address MMI and IR.

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 C5-6 herniated disc, thoracic sprain or strain, or lumbar sprain, as reformed, is supported by sufficient evidence and is affirmed.

MMI AND IR

The ALJ’s determinations that the claimant reached MMI on August 12, 2014, with a six percent IR are supported by sufficient evidence and are affirmed.

DISABILITY

As previously mentioned, in APD 152240, *supra*, the Appeals Panel stated that ALJ (ALJ)’s determination that the claimant did not have disability from (date of injury), and continuing through the date of the CCH was not appealed and became final pursuant to Section 410.169. The carrier at the CCH on remand, as well as on appeal, asserts that ALJ (ALJ)’s disability determination was not appealed and became final as a matter of law.

On remand, ALJ (ALJ) issued a determination on the disability issue. ALJ (ALJ)'s disability determination exceeds the scope of the issue before him because ALJ (ALJ)'s disability determination became final as a matter of law. Accordingly, we reverse ALJ (ALJ)'s determination that the claimant did not have disability resulting from the compensable injury during the period from (date of injury), through the date of the CCH on February 23, 2018, as exceeding the scope of the issue before him, and we render a new decision by striking ALJ (ALJ)'s disability determination.

SUMMARY

We reform the decision to correctly identify the date of the compensable injury as (date of injury), throughout the decision.

We reform the decision to correctly identify exhibits ALJ-1 through ALJ-4 were admitted into evidence.

We affirm, as reformed, ALJ's (ALJ)'s determination that the compensable injury of (date of injury), does not extend to a C5-6 herniated disc, thoracic sprain or strain, or lumbar sprain.

We affirm ALJ's (ALJ)'s determinations that the claimant reached MMI on August 12, 2014, with a six percent IR.

We reverse ALJ (ALJ)'s determination that the claimant did not have disability resulting from the compensable injury during the period from (date of injury), through the date of the CCH on February 23, 2018, as exceeding the scope of the issue before him, and we render a new decision by striking ALJ (ALJ)'s disability determination.

The true corporate name of the insurance carrier is **ACE AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
1999 BRYAN STREET, SUITE 900
(CITY), TEXAS 75201-3136.**

Veronica L. Ruberto
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge