

APPEAL NO. 181647

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 10, 2018, with the record closing on June 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 a cervical sprain and a lumbar sprain; (2) the compensable injury of (date of injury), does not extend to lower extremity radiculopathy, cervical disc bulges at C4-5, C5-6, and C6-7, and lumbar disc bulges at L2-3, L3-4, L4-5, and L5-S1; (3) the appellant (claimant) reached maximum medical improvement (MMI) on October 27, 2017; and (4) the claimant's impairment rating (IR) is five percent.

The claimant appealed that portion of the extent-of-injury determination that was not favorable to him, as well as the MMI and IR determinations. The respondent (carrier) responded, urging affirmance of the ALJ's determinations. That portion of the ALJ's determination that the compensable injury of (date of injury), extends to a cervical sprain and a lumbar sprain has not been appealed and has become final pursuant to Section 410.169.

DECISION

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

It is undisputed that the claimant sustained a compensable injury on (date of injury). The evidence reflects that the injury event occurred after a floor mat weighing approximately 85 lbs. fell from a suspended platform and struck the claimant on the head. The parties stipulated that the claimant sustained a compensable injury on (date of injury), and that the compensable injury extends to a concussion with loss of consciousness, a cervical strain, and a lumbar strain.

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).

EVIDENCE PRESENTED

At the CCH Claimant's Exhibit Nos. 1 through 14 were admitted into evidence; however, there was no Claimant's Exhibit No. 14 listed on the Claimant's Exhibit list and there is no Claimant's Exhibit No. 14 in evidence. We reform the ALJ's decision to show that Claimant's Exhibit Nos. 1 through 13 were admitted into evidence to reflect the correct number of exhibits offered by the claimant and admitted into evidence at the CCH.

Also, we note that Carrier's Exhibit O was admitted; however, it is mislabeled as ALJ Exhibit No. 3. We note that with the inclusion of Carrier's Exhibit O there are two ALJ Exhibit No. 3s in evidence.

EXTENT OF INJURY

That portion of the ALJ's determination that the compensable injury of (date of injury), does not extend to lower extremity radiculopathy, cervical disc bulges at C4-5, C5-6, and C6-7, and lumbar disc bulges at L2-3, L3-4, L4-5, and L5-S1 is supported by sufficient evidence and is affirmed.

MMI AND IR

Section 410.168 provides that the ALJ's decision shall 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.

The ALJ states in Conclusion of Law Nos. 5 and 6, the summary paragraph on page one and Decision section on page six that the claimant reached MMI on October 27, 2017, with a five percent IR; however, she failed to make findings of fact on the MMI and IR issues. Because the ALJ's decision contains no findings of fact regarding the MMI and IR issues, which were issues properly before the ALJ to resolve, it does not comply with Section 410.168 and Rule 142.16. We therefore reverse the ALJ's determination that the claimant reached MMI on October 27, 2017, with a five percent IR as incomplete, and we remand the MMI and IR issues to the ALJ. See Appeals Panel Decision (APD) 132339, decided December 12, 2013, and APD 180839, decided June 4, 2018.

SUMMARY

We reform the ALJ's decision to show that Claimant's Exhibit Nos. 1 through 13 were admitted into evidence to reflect the correct number or exhibits offered by the claimant and admitted into evidence at the CCH.

We affirm that portion of the ALJ's determination that the compensable injury of (date of injury), does not extend to lower extremity radiculopathy, cervical disc bulges at C4-5, C5-6, and C6-7, and lumbar disc bulges at L2-3, L3-4, L4-5, and L5-S1.

We reverse the ALJ's MMI and IR determinations as incomplete because she failed to make findings of fact on the MMI and IR issues, and we remand the issues of MMI and IR to the ALJ for further action consistent with this decision.

REMAND INSTRUCTIONS

On remand the ALJ is to make a findings of fact, conclusions of law and a decision regarding the issues of MMI and IR. The compensable injury of (date of injury), extends to a concussion with loss of consciousness, cervical strain and sprain, and lumbar strain and sprain.

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 **STARR INDEMNITY & LIABILITY COMPANY** and the name and address of its registered agent for service of process is

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

Veronica L. Ruberto
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge