

APPEAL NO. 181703
FILED SEPTEMBER 6, 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 February 28, 2018, and continued to June 14, 2018, with the record closing on June 26, 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 strain, lumbar sprain, left wrist sprain/strain and right sided sciatica; (2) the compensable injury of (date of injury), does not extend to a cervical disc protrusion at C5-6, neural foramen narrowing at C3-4, left C4-5, or left C6-7, bilateral neural foramen narrowing at C5-6, left sided sciatica, cervical facet syndrome or lumbar facet syndrome; (3) the appellant (claimant) reached maximum medical improvement (MMI) on July 18, 2017, with a zero percent impairment rating (IR); and (4) the claimant had disability, resulting from the compensable injury from July 28, 2017, through September 17, 2017, but not otherwise during the period from July 14, 2017, through the date of the CCH, June 14, 2018.

The claimant appealed the ALJ's MMI, IR and disability determinations. The respondent (carrier) responded, urging affirmance. The ALJ's extent-of-injury determination 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.

The claimant testified that she slipped and fell while at work on (date of injury). The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury), which extends to a cervical sprain and lumbar strain, and the Texas Department of Insurance, Division of Workers' Compensation appointed (Dr. W) as a designated doctor to determine MMI, IR and extent of injury.

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).

MMI AND IR

The ALJ's determinations that the claimant reached MMI on July 18, 2017, with a zero percent IR are supported by sufficient evidence and are affirmed.

DISABILITY

Issue reformed

The disability issue before the ALJ as reflected on the Benefit Review Conference (BRC) Report concerned whether the claimant had disability from July 14, 2017, through the present. At the first CCH, the parties agreed to amend the period of disability to address the period from "July 14, 2017, through September 18, 2017." At the second CCH the parties again agreed to amend the period of disability to address the period from "July 14, 2017, through the date of the CCH, June 14, 2018," and to include a stipulation that the claimant did not have disability from "September 19, 2017, through the date of the CCH, June 14, 2018."

We note the ALJ mistakenly states that the disability issue was amended limiting the period of disability in dispute from "July 14, 2017, through September 18, 2017." Accordingly, we reform the ALJ's disability issue to correctly reflect the period of disability in dispute from "July 14, 2017, through the date of the CCH, June 14, 2018," as amended by the parties at the second CCH held on June 14, 2018.

Stipulation reformed

Also, we note the ALJ did not include the parties' stipulation that the claimant did not have disability from September 19, 2017, through the date of the CCH, June 14, 2018. Accordingly, we reform the decision to include the parties' stipulation as follows:

Finding of Fact 1.G. The claimant did not have disability from September 19, 2017, through the date of the CCH, June 14, 2018.

ALJ's determination

The ALJ determined that the claimant had disability resulting from the compensable injury from July 28, 2017, through September 17, 2017, but not otherwise during the period from July 14, 2017, through the date of the CCH, June 14, 2018.

That portion of the ALJ's determination that the claimant had disability, resulting from the compensable injury, from July 28, 2017, through September 17, 2017, is supported by sufficient evidence and is affirmed.

That portion of the ALJ's determination that the claimant did not have disability, from July 14, 2017, through July 27, 2017, and from September 19, 2017, through the date of the CCH, June 14, 2018, is supported by sufficient evidence and is affirmed.

The claimant testified that she returned to work on September 19, 2017, as a cashier at (employer), and was still working at that job. The ALJ states in the discussion of the evidence that the claimant returned to work on "September 18, 2017," as a cashier and she was still working at that job through the date of the CCH, June 14, 2018. The ALJ mistakenly references the date the claimant returned to work as September 18, 2017, rather than September 19, 2017.

That portion of the ALJ's determination that the claimant did not have disability on September 18, 2017, is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. Accordingly, we reverse the ALJ's determination that the claimant did not have disability on September 18, 2017, and we render a new decision that the claimant had disability on September 18, 2017.

SUMMARY

We affirm the ALJ's determination that the claimant reached MMI on July 18, 2017, with a zero percent IR.

We reform the ALJ's stated disability issue to correctly reflect the period of disability in dispute from "July 14, 2017, through the date of the CCH, June 14, 2018."

We reform the decision to add the parties' stipulation that the claimant did not have disability from September 19, 2017, through the date of the CCH, June 14, 2018.

We affirm that portion of the ALJ's determination that the claimant had disability, resulting from the compensable injury, from July 28, 2017, through September 17, 2017.

We affirm that portion of the ALJ's determination that the claimant did not have disability, from July 14, 2017, through July 27, 2017, and from September 19, 2017, through the date of the CCH, June 14, 2018.

We reverse that portion of the ALJ's determination that the claimant did not have disability on September 18, 2017, and we render a new decision that the claimant had disability on September 18, 2017.

The true corporate name of the insurance carrier is **mitsui sumitomo insurance company of america** 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.**

Veronica L. Ruberto
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge