

APPEAL NO. 181731
FILED SEPTEMBER 10, 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 was held 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 sustained on (date of injury), does not extend to a right ankle sprain, right knee sprain, and right knee muscle spasm; (2) the appellant (claimant) reached maximum medical improvement (MMI) on June 22, 2017; (3) the claimant's impairment rating (IR) is zero percent; and (4) the claimant did have good cause for failing to submit to the designated doctor's examination on October 19, 2017, and is entitled to temporary income benefits (TIBs) from December 12, 2017, through January 25, 2018. The claimant appealed, disputing the ALJ's determinations of extent of injury, MMI, and IR. The claimant also sought clarification on his entitlement to TIBs from December 12, 2017, through January 25, 2018. The respondent (carrier) responded, urging affirmance of the disputed extent of injury, MMI, and IR determinations.

The ALJ's determination that the claimant had good cause for failing to submit to the designated doctor's examination on October 19, 2017, was not appealed and became final pursuant to Section 410.169.

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, at least in the form of a right shin contusion. The claimant testified that he struck his leg on a metal hopper when going to check on parts.

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

The ALJ's determination that the compensable injury sustained on (date of injury), does not extend to a right ankle sprain, right knee sprain, and right knee muscle spasm is supported by sufficient evidence and is affirmed.

MMI

The ALJ's determination that the claimant reached MMI on June 22, 2017, is supported by sufficient evidence and is affirmed.

IR

The ALJ's determination that the claimant's IR is zero percent is supported by sufficient evidence and is affirmed.

ENTITLEMENT TO TIBS

In his appeal the claimant asks, "Should [the ALJ] not have indicated that I did have good cause; however, because I reached MMI on June 22, 2017, I am not entitled to [TIBs]?" Section 408.101(a) provides that an employee is entitled to TIBs if the employee has a disability and has not attained MMI. Section 408.102(a) provides TIBs continue until the employee reaches MMI. As previously noted, the ALJ's determination that the claimant reached MMI on June 22, 2017, is affirmed. Accordingly, it was error for the ALJ to determine that the claimant is entitled to TIBs from December 12, 2017, through January 25, 2018. We reverse that portion of the ALJ's determination that the claimant is entitled to TIBs from December 12, 2017, through January 25, 2018, and render a new decision that the claimant is not entitled to TIBs from December 12, 2017, through January 25, 2018, because he was determined to have reached MMI on June 22, 2017.

SUMMARY

We affirm the ALJ's determination that the compensable injury sustained on (date of injury), does not extend to a right ankle sprain, right knee sprain, and right knee muscle spasm.

We affirm the ALJ's determination that the claimant reached MMI on June 22, 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 claimant is entitled to TIBs from December 12, 2017, through January 25, 2018, and render a new decision

that the claimant is not entitled to TIBs from December 12, 2017, through January 25, 2018.

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

Margaret L. Turner
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Carisa Space-Beam
Appeals Judge