

APPEAL NO. 181865
FILED OCTOBER 23, 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 July 18, 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), does not extend to a L3-4 left lateral disc bulge, L4-5 and L5-S1 disc protrusions, or disc bulges at C3-4, C4-5, and C5-6; (2) the appellant/cross-respondent (claimant) reached maximum medical improvement (MMI) on March 21, 2017; (3) the claimant's impairment rating (IR) is eight percent; and (4) the claimant had disability resulting from the compensable injury of (date of injury), beginning on December 7, 2017, and continuing through July 6, 2018.

The claimant appealed, disputing the ALJ's determination of the extent of the compensable injury, MMI, and IR. The respondent/cross-appellant (self-insured) responded, urging affirmance of the disputed extent of injury, MMI, and IR determinations. The self-insured cross-appealed, disputing the ALJ's determination that the claimant had disability beginning on December 7, 2017, and continuing through July 6, 2018. The appeal file does not contain a response from the claimant to the self-insured's appeal.

DECISION

Affirmed in part and reversed and remanded in part.

The claimant testified she was injured in a motor vehicle accident on (date of injury). The parties stipulated, in part, that on (date of injury), the claimant sustained a compensable injury which consists of a left shoulder sprain/strain, neck sprain/strain, lumbar sprain/strain, head contusion with subjective vertigo, and left ear hearing loss.

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 of (date of injury), does not extend to a L3-4 left lateral disc bulge, L4-5 and L5-S1 disc protrusions, or disc bulges at C3-4, C4-5, and C5-6 is supported by sufficient evidence and is affirmed.

MMI

The ALJ's determination that the claimant reached MMI on March 21, 2017, is supported by sufficient evidence and is affirmed.

IR

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

DISABILITY

Disability means the inability to obtain and retain employment at wages equivalent to the pre-injury wage because of a compensable injury. Section 401.011(16). The claimant has the burden to prove that she had disability as defined by Section 401.011(16). Disability is a question of fact to be determined by the ALJ. See Appeals Panel Decision (APD) 042097, decided October 18, 2004. Disability can be established by a claimant's testimony alone, even if contradictory of medical testimony. APD 041116, decided July 2, 2004. The claimant need not prove that the compensable injury was the sole cause of her disability; only that it was a producing cause. APD 042097.

The ALJ found in Finding of Fact No. 8 that the compensable injury of (date of injury), was a cause of the claimant's inability to obtain and retain employment at wages equivalent to her pre-injury wages beginning on December 7, 2017, and continuing through to July 6, 2018. Additionally, the ALJ in Conclusion of Law No. 6 determined that the claimant had disability resulting from the compensable injury of (date of injury), beginning on December 7, 2017, and continuing through July 6, 2018. In her decision the ALJ determined that the claimant had disability resulting from the compensable injury of (date of injury), beginning on December 7, 2017, and continuing through July 6, 2018. However, in the opening paragraph on page one of the Decision and Order, the ALJ determined that the claimant did not have disability resulting from the compensable injury of (date of injury), beginning on December 7, 2017, and continuing through July 6, 2018.

In the discussion of the evidence the ALJ noted the following:

On January 9, 2018, (Dr. H) issued unspecified work restrictions to [the] [c]laimant due to conditions outside of the compensable injury. On February 12, 2018, and March 12, 2018, Dr. [H] continued work restrictions that barred [the] [c]laimant from all work indefinitely due to conditions outside of the compensable injury. Considering [the] [c]laimant's testimony and medical records from Dr. [H], [the] [c]laimant establish[ed] by a preponderance of the evidence that the compensable injury was a cause of her inability to obtain and retain employment at wages equivalent to her pre-injury wage beginning on December 7, 2017, and continuing through July 6, 2018.

The ALJ specifically notes that the claimant's work restrictions were due to conditions "outside the compensable injury" but then bases her disability determination, in part, on those records. Given the inconsistency in the ALJ's discussion and her determination of disability in separate parts of the Decision and Order, we reverse the ALJ's determination that the claimant had disability resulting from the compensable injury of (date of injury), beginning on December 7, 2017, and continuing through July 6, 2018, and remand the disability issue to the ALJ for further action consistent with this decision.

SUMMARY

We affirm the ALJ's determination that the compensable injury of (date of injury), does not extend to a L3-4 left lateral disc bulge, L4-5 and L5-S1 disc protrusions, or disc bulges at C3-4, C4-5, and C5-6.

We affirm the ALJ's determination that the claimant reached MMI on March 21, 2017.

We affirm the ALJ's determination that the claimant's IR is eight percent.

We reverse the ALJ's determination that the claimant had disability resulting from the compensable injury of (date of injury), beginning on December 7, 2017, and continuing through July 6, 2018, and remand the disability issue to the ALJ.

REMAND INSTRUCTIONS

On remand the ALJ is to determine whether the claimant had disability resulting from an injury sustained on (date of injury), from December 7, 2017, to July 6, 2018, that is consistent and supported by the evidence.

The self-insured is required to provide a physical address of a registered agent for service of process in Texas. See *generally* APD 011845-s, decided September 11, 2001. We note that the Benefit Review Conference Report lists (Carrier 1) as the carrier for the employer but the insurance carrier information sheet provides (Carrier 2). On remand the ALJ is to verify the correct carrier information.

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 according to the insurance carrier information sheet provided by self-insured is **CONCHO VALLEY COUNCIL OF GOVERNMENTS** and the name and address of its registered agent for service of process is

**JEFFREY SUTTON, EXECUTIVE DIRECTOR
2801 W. LOOP 306, SUITE A
SAN ANGELO, TEXAS 76904.**

Margaret L. Turner
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Carisa Space-Beam
Appeals Judge