

APPEAL NO. 181960
FILED NOVEMBER 14, 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 30, 2018, with the record closing on August 6, 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 right knee lateral meniscus tear, right knee small tears of the posterior horn of the medial meniscus, or abnormality of gait and mobility; (2) the employer did not tender a bona fide offer of employment (BFOE) to the appellant/cross-respondent (claimant); (3) the claimant had disability resulting from the compensable injury of (date of injury), beginning on April 1, 2017, and continuing through May 20, 2017; and (4) the claimant did not have disability beginning on May 21, 2017, through November 19, 2017, or from January 5, 2018, through July 30, 2018.

The claimant appealed the ALJ's extent-of-injury determination as well as that portion of the ALJ's disability determination that was decided against her, arguing that the ALJ's disputed determinations were against the great weight and preponderance of the evidence. The respondent/cross-appellant (carrier) responded, urging affirmance of the determinations appealed by the claimant. The carrier cross-appealed, disputing the ALJ's determination that the employer did not tender a BFOE to the claimant. The carrier also notes that the ALJ's decision portion of the decision and order is inconsistent with the Finding of Fact and Conclusion of Law regarding the disability period beginning on April 1, 2017, and continuing through May 20, 2017. The appeal file does not contain a response to the carrier's appeal.

DECISION

Affirmed as reformed.

The claimant, who worked in housekeeping for the employer, testified that she injured her knee when it twisted while she was walking sideways to get from between the bed and the wall and her foot got caught on the post of the bed. At issue was the extent of the compensable injury, disability, and whether the employer tendered a BFOE to the claimant.

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).

STIPULATIONS

The parties stipulated that on (date of injury), the employer provided workers' compensation insurance with Zenith Insurance Company. However, in Finding of Fact No. 1.C. the ALJ mistakenly stated that the parties stipulated that on (date of injury), the employer provided workers' compensation insurance with Travelers Indemnity Company, carrier. We reform Finding of Fact No. 1.C. to state that on (date of injury), the employer provided workers' compensation insurance with Zenith Insurance Company to conform to the evidence.

The ALJ stated in Finding of Fact 1.D. that on (date of injury), the claimant sustained a compensable injury in the form of a right knee sprain/strain. A review of the record reflects that the parties actually stipulated that on (date of injury), the claimant sustained a compensable injury in the form of a right knee sprain. We reform Finding of Fact No. 1.D. to state that on (date of injury), the claimant sustained a compensable injury in the form of a right knee sprain to conform to the evidence.

EXTENT OF INJURY

The ALJ's determination that the compensable injury of (date of injury), does not extend to right knee lateral meniscus tear, right knee small tears of the posterior horn of the medial meniscus, or abnormality of gait and mobility is supported by sufficient evidence and is affirmed.

BFOE

The ALJ's determination that the employer did not tender a BFOE to the claimant is supported by sufficient evidence and is affirmed.

DISABILITY

The ALJ found in Finding of Fact No. 6 that the claimant was unable to earn her pre-injury wages as a result of the compensable injury beginning on April 1, 2017, and continuing through May 20, 2017. The ALJ's finding is supported by sufficient evidence. Additionally, in Conclusion of Law No. 5 the ALJ determined that the claimant did have disability resulting from the compensable injury of (date of injury), beginning on April 1, 2017, and continuing through May 20, 2017. However, in the decision portion of the decision and order the ALJ mistakenly determined that the claimant did not have disability resulting from the compensable injury of (date of injury), beginning on April 1,

2017, and continuing through May 20, 2017. Accordingly, we reform the decision portion of the decision and order to conform to Finding of Fact No. 6 and Conclusion of Law No. 5, to state that the claimant had disability resulting from the compensable injury of (date of injury), beginning on April 1, 2017, and continuing through May 20, 2017. We note that the ALJ determined in the opening paragraph of her decision and order that the claimant had disability beginning on April 1, 2017, and continuing through May 20, 2017.

The ALJ's determination that the claimant did not have disability resulting from the compensable injury of (date of injury), beginning on May 21, 2017, through November 19, 2017, or beginning on January 5, 2018, through July 30, 2018, is supported by sufficient evidence and is affirmed.

SUMMARY

We affirm the ALJ's determination that the compensable injury of (date of injury), does not extend to right knee lateral meniscus tear, right knee small tears of the posterior horn of the medial meniscus, or abnormality of gait and mobility.

We affirm the ALJ's determination that the employer did not tender a BFOE to the claimant.

We reform Finding of Fact No. 1.C. to state that on (date of injury), the employer provided workers' compensation insurance with Zenith Insurance Company.

We reform Finding of Fact No. 1.D. to state that on (date of injury), the claimant sustained a compensable injury in the form of a right knee sprain.

We affirm as reformed the ALJ's determination that the claimant had disability resulting from the compensable injury of (date of injury), beginning on April 1, 2017, and continuing through May 20, 2017.

We affirm the ALJ's determination that the claimant did not have disability resulting from the compensable injury of (date of injury), beginning on May 21, 2017, through November 19, 2017, or beginning on January 5, 2018, through July 30, 2018.

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

**CT CORPORATION SYSTEM
1999 BRYAN STREET, SUITE 900
DALLAS, TEXAS 75201-3136.**

Margaret L. Turner
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Carisa Space-Beam
Appeals Judge