

APPEAL NO. 182017
FILED NOVEMBER 8, 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 May 29, 2018, in (city), Texas, with (administrative law judge) presiding as the administrative law judge (ALJ), and reset and held on July 26, 2018, with the record closing on August 2, 2018, in (city), Texas, with (administrative law judge) presiding as the ALJ. ALJ (ALJ) resolved the disputed issues by deciding that: (1) the respondent (claimant) reached maximum medical improvement (MMI) on September 12, 2017, and (2) the claimant's impairment rating (IR) is 21%. The appellant (carrier) appealed, disputing the ALJ's MMI and IR determinations. The carrier also alleged that the ALJ erred in failing to add issues that were actually litigated at the CCH. The appeal file does not contain a response from the claimant to the carrier's appeal.

DECISION

Affirmed in part and reversed and remanded in part.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury), that extends to at least a left leg fracture. The claimant testified that he was injured when the forklift he was driving flipped over and rolled onto his left leg. We note that the decision and order states that ALJ Exhibits ALJ-1 and ALJ-2 were admitted at the CCH. However, at the CCH held on May 29, 2018, ALJ (ALJ) admitted ALJ Exhibits ALJ-1 through ALJ-3b, and the record contains emails from ALJ (ALJ) marked as ALJ-3.

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).

GOOD CAUSE FOR CLAIMANT'S FAILURE TO ATTEND MAY 29, 2018, CCH

ALJ (ALJ) found that the claimant had good cause for failing to attend the May 29, 2018, CCH. The ALJ's finding is supported by sufficient evidence and is affirmed. The fact that another fact finder may have drawn different inferences from the evidence which would have supported a different result does not provide a basis for us to disturb

the challenged determination. *Salazar v. Hill*, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

EXTENT OF INJURY

The carrier contends that the ALJ erred in failing to add the issue of the extent of the claimant's injury and make findings of fact, conclusions of law, and a decision on that issue. Review of the record reflects that both parties actually litigated whether the claimant's injury was a single left leg fracture or multiple left leg fractures. In this case the ALJ erred in failing to make findings of fact, conclusions of law, and a decision on this issue. Accordingly, we reverse the ALJ's decision as incomplete and we remand this case to the ALJ for further action consistent with this decision.

APPOINTMENT OF SECOND DESIGNATED DOCTOR

The carrier contends that the ALJ erred in failing to add the issue of whether (Dr. H) was properly appointed as designated doctor to address MMI and IR and to make findings of fact, conclusions of law, and a decision on that issue. Review of the record reflects that both parties actually litigated whether Dr. H was properly appointed to consider MMI and IR. Furthermore, the remanded extent-of-injury issue may directly impact the resolution of whether Dr. H was properly appointed to consider MMI and IR in this case. Under the facts of this case it was error for the ALJ to fail to make findings of fact, conclusions of law, and a decision on this issue. Accordingly, we reverse the ALJ's decision as incomplete and we remand this case to the ALJ for further action consistent with this decision.

MMI/IR

Because we have remanded this case for the ALJ to make findings of fact, conclusions of law, and a decision about the extent of the compensable injury and whether Dr. H was properly appointed as designated doctor to address MMI and IR, we must reverse the ALJ's determinations that the claimant reached MMI on September 12, 2017, with a 21% IR, and we remand the issues of MMI and IR to the ALJ for further action consistent with this decision.

SUMMARY

We affirm the ALJ's finding that the claimant had good cause for failing to attend the May 29, 2018, CCH.

We reverse the ALJ's decision as incomplete and we remand this case to the ALJ to add the issue of the extent of the (date of injury), compensable injury for further action consistent with this decision.

We reverse the ALJ's decision as incomplete and we remand this case to the ALJ to add the issue of whether Dr. H was properly appointed as designated doctor to address MMI and IR for further action consistent with this decision.

We reverse the ALJ's determination that the claimant reached MMI on September 12, 2017, and we remand the issue of the claimant's date of MMI to the ALJ for further action consistent with this decision.

We reverse the ALJ's determination that the claimant's IR is 21%, and we remand the issue of the claimant's IR to the ALJ for further action consistent with this decision.

REMAND INSTRUCTIONS

On remand the ALJ is to add the issue of the extent of the (date of injury), compensable injury, and make findings of fact, conclusions of law, and a decision on that issue. The ALJ is also to add the issue of whether Dr. H was properly appointed as designated doctor to address MMI and IR, and make findings of fact, conclusions of law, and a decision on that issue. The ALJ is to then make findings of fact, conclusions of law, and a decision that is supported by the evidence on the claimant's MMI and IR.

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 Appeals Panel Decision 060721, decided June 12, 2006.

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.**

Carisa Space-Beam
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge