

APPEAL NO. 182119  
FILED NOVEMBER 9, 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 August 16, 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 patellofemoral chondrosis with subchondral edema, cystic change to lateral patellar facet, medial compartment chondrosis, reactive impingement edema in the superior lateral aspect of Hoffa's fat pad, and lateral epicondylitis right upper extremity; (2) the appellant (claimant) reached maximum medical improvement (MMI) on December 8, 2017; and (3) the claimant's impairment rating (IR) is one percent. The claimant appealed, disputing all of the ALJ's determinations. The respondent (self-insured) responded, urging affirmance of the ALJ's determinations.

**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), and that the accepted compensable injury is right triangular fibrocartilage complex (TFCC) wrist tear, right shoulder sprain, and right knee sprain. The claimant testified she was injured when she slipped on stairs while carrying garbage bags.

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 right knee patellofemoral chondrosis with subchondral edema, cystic change to lateral patellar facet, medial compartment chondrosis, reactive impingement edema in the superior lateral aspect of Hoffa's fat pad, and lateral epicondylitis right upper extremity is supported by sufficient evidence and is affirmed.

Although the Benefit Review Conference Report in evidence shows the self-insured stated the compensable injury is limited, in part, to right knee leaking Baker's cyst, the self-insured specifically declined at the CCH to stipulate that the compensable injury extended to right knee leaking Baker's cyst. However, both parties actually litigated right knee leaking Baker's cyst, and the ALJ discussed that condition at length in his discussion. Despite the ALJ's discussion on right knee leaking Baker's cyst, the ALJ did not make any findings of fact, conclusions of law, or a decision regarding the compensability of that condition. Section 410.168 provides that an ALJ's decision shall contain findings of fact and conclusions of law, a determination of whether benefits are due, and an award of benefits due. The ALJ in this case erred in failing to make findings of fact, conclusions of law, and a decision on right knee leaking Baker's cyst. Accordingly, we reverse the ALJ's decision as being incomplete and we remand this case to the ALJ to make findings of fact, conclusions of law, and a decision as to whether the (date of injury), compensable injury extends to right knee leaking Baker's cyst.

### **MMI/IR**

Given that we have reversed and remanded this case for the ALJ to determine the compensability of right knee leaking Baker's cyst, we also reverse the ALJ's determinations that the claimant reached MMI on December 8, 2017, with a one percent IR, and we remand the issues of the claimant's MMI and IR to the ALJ for further action consistent with this decision.

Pursuant to Section 410.203(c), the Appeals Panel may not remand a case more than once. We note that there are two MMI/IR certifications in evidence, which are from (Dr. E), the designated doctor, and (Dr. B), the post-designated doctor required medical examination doctor. Both certifications consider and rate a right ankle sprain, a condition that has not at this time been determined to be part of the compensable injury.

### **SUMMARY**

We affirm the ALJ's determination that the compensable injury of (date of injury), does not extend to right knee patellofemoral chondrosis with subchondral edema, cystic change to lateral patellar facet, medial compartment chondrosis, reactive impingement edema in the superior lateral aspect of Hoffa's fat pad, and lateral epicondylitis right upper extremity.

We reverse the ALJ's decision as incomplete and we remand the issue of whether the (date of injury), compensable injury extends to right knee leaking Baker's cyst, a condition that was actually litigated at the CCH.

We reverse the ALJ's determination that the claimant reached MMI on December 8, 2017, and we remand the issue of MMI to the ALJ for further action consistent with this decision.

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

### **REMAND INSTRUCTIONS**

On remand the ALJ is to add the issue of whether the (date of injury), compensable injury extends to right knee leaking Baker's cyst because it was actually litigated and make findings of fact, conclusions of law, and a decision on that condition.

Dr. E is the designated doctor in this case. If necessary, the ALJ is to determine whether Dr. E is still qualified and available to be the designated doctor. If Dr. E is no longer qualified or is not available to serve as the designated doctor, then another designated doctor is to be appointed to determine the claimant's MMI and IR for the (date of injury), compensable injury.

The parties are to be provided with any new MMI/IR certification and allowed an opportunity to respond. The ALJ is to consider the evidence and make a determination regarding the claimant's MMI and IR consistent with this decision.

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 **FORT WORTH INDEPENDENT SCHOOL DISTRICT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**MAX ATES  
100 NORTH UNIVERSITY, NW 140-H  
FORT WORTH, TEXAS 76107.**

---

Carisa Space-Beam  
Appeals Judge

CONCUR:

---

Veronica L. Ruberto  
Appeals Judge

---

Margaret L. Turner  
Appeals Judge