

APPEAL NO. 182350
FILED NOVEMBER 29, 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 28, 2018, with the record closing on September 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),¹ does not extend to lumbar radiculopathy; (2) the appellant (claimant) reached maximum medical improvement (MMI) on June 12, 2018; and (3) the claimant's impairment rating (IR) is zero percent.

The claimant appealed the ALJ's extent of injury, MMI, and IR determinations. Also, the claimant asserts that the ALJ's decision contains numerous errors and requests that the Appeals Panel remand the decision to the ALJ to correct the errors, including the date of injury and misstatement of the evidence. The respondent (carrier) responded, urging affirmance of the ALJ's determinations.

DECISION

Reversed and remanded.

The parties stipulated, in part, that on (date of injury), the claimant sustained a compensable injury in the form of at least a left knee contusion, a left elbow contusion, a lumbar sprain, and a left hip sprain; the Texas Department of Insurance, Division of Workers' Compensation (Division) appointed (Dr. R) as the designated doctor to address the issues of extent of injury, MMI, IR and return to work; and the date of statutory MMI is June 12, 2018. The claimant testified that the injury occurred on (date of injury), as he stepped over a hose with his left foot, and he slipped and fell, landing on the left side of his body.

EXTENT OF INJURY

On appeal the claimant states that the ALJ's discussion in the decision has numerous errors, including (Dr. S) testimony that the claimant has diabetes. The ALJ states in the discussion of the decision that:

[Dr. S] pointed out how the April 11, 2017, EMG/NCV indicated [the] [c]laimant had polyneuropathy in his lower extremities. [Dr. S] noted that

¹ We note that the ALJ incorrectly referenced the claimant's date of injury in the issue statement as June 28, 2018, and in the discussion of the decision as (date), rather than (date of injury).

[the] [c]laimant has two of the most common causes of polyneuropathy, diabetes and a history of gastric bypass surgery.

Furthermore, the ALJ states that “[a]fter considering the differing medical opinions offered, [Dr. S’s] is the most persuasive. Therefore, the compensable injury of (date of injury), does not extend to or include lumbar radiculopathy.”

Review of the record reflects that Dr. S did not provide testimony that the claimant had diabetes. The ALJ’s statement that “[Dr. S] noted that [the] [c]laimant has two of the most common causes of polyneuropathy, *diabetes* and a history of gastric bypass surgery” (emphasis added) is a misstatement of the evidence. While the ALJ can accept or reject in whole or, in part, the evidence regarding the claimed injury, his decision in this case is based, in part, upon a misstatement of the medical evidence in the record.

Accordingly, we reverse the ALJ’s determination that the compensable injury of (date of injury), does not extend to lumbar radiculopathy, and we remand the issue of whether the compensable injury of (date of injury), extends to lumbar radiculopathy to the ALJ for further action consistent with this decision.

MMI AND IR

Because we have reversed and remanded the extent-of-injury issue, we also reverse the ALJ’s determinations that the claimant reached MMI on June 12, 2018, and the claimant’s IR is zero percent, and we remand the issues of MMI and IR to the ALJ for further action consistent with this decision.

SUMMARY

We reverse the ALJ’s determination that the compensable injury of (date of injury), does not extend to lumbar radiculopathy, and we remand the issue of whether the compensable injury of (date of injury), extends to lumbar radiculopathy to the ALJ for further action consistent with this decision.

We reverse the ALJ’s determination that the claimant reached MMI on June 12, 2018, and we remand the MMI issue to the ALJ for further action consistent with this decision.

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

REMAND INSTRUCTIONS

On remand the ALJ is to correct his date of injury and misstatement of the medical evidence in the record. The ALJ shall consider all of the evidence and make a determination on the issues of extent of injury, MMI, and IR.

Dr. R is the designated doctor in this case. If necessary, on remand the ALJ is to determine whether Dr. R is still qualified and available to be the designated doctor. If Dr. R is no longer qualified or available to serve as the designated doctor and it is necessary for the ALJ to obtain a new MMI/IR certification, 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 the designated doctor's new certification of MMI and IR and are to be allowed an opportunity to respond. The ALJ is then to make a determination on 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 Division, 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 **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MR. RICHARD J. GERGASKO, PRESIDENT
6210 HIGHWAY 290 EAST
AUSTIN, TEXAS 78723.**

Veronica L. Ruberto
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge