

APPEAL NO. 182482
FILED DECEMBER 19, 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 October 15, 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 respondent (claimant) sustained a compensable injury on (date of injury); and, (2) the claimant had disability on May 12, 2018, and from May 15, 2018, through the date of the CCH, but he did not have disability on May 11, 2018, and May 14, 2018, resulting from the compensable injury of (date of injury).

The appellant (carrier) appealed the ALJ's compensable injury determination and that portion of the disability determination that was favorable to the claimant. The claimant responded, urging affirmance of the disputed determinations. That portion of the ALJ's determination that the claimant did not have disability on May 11, 2018, and May 14, 2018, has not been appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed in part and reversed and remanded in part.

The claimant testified that he was injured on (date of injury), when a co-worker handed him a diesel pump while he stood on the steps of a tank truck. The claimant stated he improperly grabbed the pump, then felt a pop in his back and fell off the steps of the tank truck.

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).

COMPENSABLE INJURY

The ALJ's determination that the claimant sustained a compensable injury on (date of injury), is supported by sufficient evidence and is affirmed.

DISABILITY

That portion of the ALJ's disability determination that the claimant had disability on May 12, 2018, and from May 15, 2018, through the date of the CCH resulting from the compensable injury of (date of injury), is supported by sufficient evidence and is affirmed.

The Benefit Review Conference (BRC) Report was in evidence and listed the disability issue in dispute as follows: "Did the claimant have disability resulting from the claimed injury?" The parties agreed at the CCH that this was the disputed disability issue.

Section 410.168 provides that an ALJ's decision contain findings of fact and conclusions of law, a determination of whether benefits are due, and an award of benefits due. 28 TEX. ADMIN. CODE § 142.16 (Rule 142.16) provides that an ALJ's decision shall be in writing and include findings of fact, conclusions of law, and a determination of whether benefits are due and if so, an award of benefits due. However, the ALJ failed to make a finding of fact, conclusion of law, or decision of whether the claimant had disability on May 13, 2018. Because the ALJ failed to make a determination on the entire disability period as properly before her to determine, the ALJ's decision is reversed as being incomplete. See Appeals Panel Decision (APD) 171088, decided June 21, 2017. Accordingly, we reverse the ALJ's decision as being incomplete and remand a portion of the disability issue to the ALJ to determine whether the claimant had disability on May 13, 2018.

SUMMARY

We affirm the ALJ's determination that the claimant sustained a compensable injury on (date of injury).

We affirm that portion of the ALJ's disability determination that the claimant had disability on May 12, 2018, and from May 15, 2018, through the date of the CCH resulting from the compensable injury of (date of injury).

We reverse the ALJ's disability determination as being incomplete and remand to the ALJ to determine whether the claimant had disability on May 13, 2018.

REMAND INSTRUCTIONS

On remand the ALJ is to make findings of fact, conclusions of law, and a determination as to whether the claimant had disability on May 13, 2018.

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 is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MR. RICHARD GERGASKO, PRESIDENT
2200 ALDRICH ST.
AUSTIN, TEXAS 78723.**

Veronica L. Ruberto
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge