

APPEAL NO. 190201
FILED MARCH 20, 2019

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A bifurcated contested case hearing was held on July 12, 2018, and January 7, 2019, in (city), Texas, with the (administrative law judge) presiding as the administrative law judge (ALJ). The ALJ resolved the disputed issues by deciding that: (1) the compensable injury sustained on (date of injury), does not extend to sciatica, lumbar radiculitis, mild posterocentral left paracentral disc herniation at L5-S1, or intervertebral disc disorders with radiculopathy; (2) the appellant (claimant) reached maximum medical improvement (MMI) on June 29, 2016; and (3) the claimant's impairment rating (IR) is five percent. The claimant appealed, disputing the ALJ's determinations of extent of injury, MMI, and IR. The respondent (carrier) responded, urging affirmance of the disputed extent of injury, MMI, and IR determinations.

DECISION

Affirmed as reformed.

The parties stipulated, in part, that on (date of injury), the claimant sustained a compensable injury at least in the form of a lumbar strain. The claimant testified that he was injured when he was moving a piece of equipment.

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 sustained on (date of injury), does not extend to sciatica, lumbar radiculitis, mild posterocentral left paracentral disc herniation at L5-S1, or intervertebral disc disorders with radiculopathy is supported by sufficient evidence and is affirmed.

MMI

The ALJ found that the preponderance of the other medical evidence is not contrary to the certification from the Texas Department of Insurance, Division of Workers' Compensation (Division)-appointed designated doctor, (Dr. F), that certified that the claimant reached MMI on June 29, 2016, with a five percent IR. However, the evidence reflects that Dr. F certified that the claimant reached MMI on June 20, 2016 (rather than June 29, 2016) with a five percent IR. In the attached narrative, Dr. F stated, in part, the MMI date used should be June 20, 2016. The Report of Medical Evaluation (DWC-69) in evidence from Dr. F certified on June 1, 2017, that the claimant reached MMI on June 20, 2016. Additionally, Dr. F submitted a second DWC-69 and narrative dated October 25, 2018, which again certified for the compensable condition of lumbar strain the claimant reached MMI on June 20, 2016. The ALJ mistakenly determined that the claimant reached MMI on June 29, 2016, as certified by Dr. F. The evidence reflects that Dr. F actually certified that the claimant reached MMI on June 20, 2016, for the compensable injury of a lumbar strain. Accordingly, we reform Finding of Fact Nos. 4 and 5 and Conclusion of Law No. 4 as well as the decision to change the date the designated doctor certified the claimant reached MMI to June 20, 2016, rather than June 29, 2016, to conform to the evidence.

IR

The ALJ's determination that the claimant's IR is five percent is supported by sufficient evidence and is affirmed.

SUMMARY

We affirm the ALJ's determination that the compensable injury sustained on (date of injury), does not extend to sciatica, lumbar radiculitis, mild posterocentral left paracentral disc herniation at L5-S1, or intervertebral disc disorders with radiculopathy.

We affirm as reformed the ALJ's determination that the claimant reached MMI on June 20, 2016.

We affirm the ALJ's determination that the claimant's IR is five percent.

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.**

Margaret L. Turner
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Carisa Space-Beam
Appeals Judge