

APPEAL NO. 190218
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 contested case hearing was held on December 27, 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 sustained on (date of injury), does not extend to anxiety, depression, short term/long term memory loss, cognitive issues, insomnia, fatigue, or migraine headaches; (2) the appellant (claimant) reached maximum medical improvement (MMI) on December 11, 2017; (3) the claimant's impairment rating (IR) is five percent; and (4) the first certification of MMI and assigned IR from (Dr. L) dated February 19, 2018, did become final under Section 408.123 and 28 TEX. ADMIN. CODE § 130.12 (Rule 130.12). The claimant appealed, disputing the ALJ's determinations of extent of injury, MMI, IR, and finality. The respondent (carrier) responded, urging affirmance of the disputed extent of injury, MMI, IR, and finality determinations.

DECISION

Affirmed in part and reversed and remanded in part.

The parties stipulated, in part, that on (date of injury), the claimant sustained a compensable injury at least in the form of a traumatic brain injury, left frontotemporal epidural hematoma with craniotomy, cervical sprain, and cervical strain. The claimant testified that she was dealing with a customer and the next thing she remembered was waking up in the hospital. The medical records in evidence reflect the claimant hit her head after falling while at work.

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).

FINALITY

The ALJ's determination that the first certification of MMI and assigned IR from Dr. L dated February 19, 2018, became final pursuant to Section 408.123 and Rule 130.12 is supported by sufficient evidence and is affirmed.

MMI

The ALJ's determination that the claimant reached MMI on December 11, 2017, is supported by sufficient evidence and is affirmed.

IR

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

EXTENT OF INJURY

The ALJ states in Conclusion of Law No. 3, the summary paragraph on page one and Decision section on page six that the compensable injury of (date of injury), does not extend to anxiety, depression, short term/long term memory loss, cognitive issues, insomnia, fatigue, or migraine headaches. Although the ALJ made a conclusion of law, decision, and discussed the extent-of-injury issue in her discussion of the evidence, the ALJ failed to make a finding of fact whether the compensable injury of (date of injury), extends to anxiety, depression, short term/long term memory loss, cognitive issues, insomnia, fatigue, and migraine headaches.

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. 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. Because the ALJ's decision contains no findings of fact regarding the extent-of-injury issue, which was an issue properly before the ALJ to resolve, it does not comply with Section 410.168 and Rule 142.16. We therefore reverse the ALJ's determination that the compensable injury of (date of injury), does not extend to anxiety, depression, short term/long term memory loss, cognitive issues, insomnia, fatigue, or migraine headaches and we remand the extent-of-injury issue to the ALJ for further action consistent with this decision. See Appeals Panel Decision (APD) 132339, decided December 12, 2013, and APD 180839, decided June 4, 2018.

SUMMARY

We affirm the ALJ's determination that the first certification of MMI and assigned IR from Dr. L dated February 19, 2018, became final pursuant to Section 408.123 and Rule 130.12.

We affirm the ALJ's determination that the claimant reached MMI on December 11, 2017.

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

We reverse the ALJ's determination that the compensable injury of (date of injury), does not extend to anxiety, depression, short term/long term memory loss, cognitive issues, insomnia, fatigue, or migraine headaches and we remand the extent-of-injury issue to the ALJ for further action consistent with this decision.

REMAND INSTRUCTIONS

On remand the ALJ is to make a finding of fact, conclusion of law, and decision on whether the compensable injury of (date of injury), extends to anxiety, depression, short term/long term memory loss, cognitive issues, insomnia, fatigue, and migraine headaches.

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 **XL INSURANCE AMERICA, INC.** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
1999 BRYAN STREET, SUITE 900
DALLAS, TEXAS 75201-3136.**

Margaret L. Turner
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Carisa Space-Beam
Appeals Judge