

APPEAL NO. 190297
FILED MARCH 28, 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 (CCH) was held on August 8, 2018, with the record closing on January 10, 2019, 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 a loss of sense of smell, skull fracture, disc herniation at C6-7, cervical radiculopathy at C6-7, or spinal stenosis at C6-7; (2) the first certification of maximum medical improvement (MMI) and impairment rating (IR) assigned by (Dr. V) on June 6, 2017, did not become final under Section 408.123 and 28 TEX. ADMIN. CODE § 130.12 (Rule 130.12); (3) the respondent/cross-appellant (claimant) reached MMI on May 11, 2017, with an IR of 5%; and (4) the claimant had disability beginning on May 12, 2017, through January 25, 2018.

The appellant/cross-respondent (carrier) appealed the ALJ's disability determination. Additionally, the carrier filed a request to correct a clerical error regarding the extent-of-injury condition of a skull fracture. The claimant did not respond to the carrier's appeal. The claimant cross-appealed the ALJ's extent of injury, MMI, and IR determinations. The carrier responded, urging affirmance. The ALJ's determination that the first certification of MMI and IR assigned by Dr. V on June 6, 2017, did not become final under Section 408.123 and Rule 130.12 was not appealed; therefore, the ALJ's finality determination has become final pursuant to Section 410.169.

DECISION

Affirmed in part and reversed and rendered in part.

The evidence reflects that the claimant fell backwards and struck his head while working on (date of injury). The parties stipulated, in part, that: on (date of injury), the claimant sustained a compensable injury; the compensable injury of (date of injury), extends to include at least an epidural/subdural hematoma, a skull fracture, a scalp laceration, and a cervical sprain/strain; and the compensable injury of (date of injury), does not extend to a traumatic brain injury. The evidence reflects that, for purposes of MMI and IR, the Texas Department of Insurance, Division of Workers' Compensation (Division)-appointed designated doctor, Dr. V, examined the claimant on June 6, 2017, and certified on June 7, 2017, that the claimant reached MMI on May 11, 2017, with a 10% IR using the Guides to the Evaluation of Permanent Impairment, fourth edition (1st,

2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000) (AMA Guides). After the CCH, the ALJ sent a letter of clarification to Dr. V informing him that the compensable injury of (date of injury), includes an epidural/subdural hematoma, a skull fracture, a scalp laceration, and a cervical sprain/strain, but does not include a traumatic brain injury. On December 13, 2018, Dr. V responded and amended the claimant's IR to a 5% for the compensable injury.

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

That portion of the ALJ's determination that the compensable injury of (date of injury), does not extend to a loss of sense of smell, disc herniation at C6-7, cervical radiculopathy at C6-7, or spinal stenosis at C6-7 is supported by sufficient evidence and is affirmed.

The ALJ states in her decision that the compensable injury of (date of injury), does not extend to a skull fracture in Finding of Fact No. 3 on page six and in Conclusion of Law No. 3 on page seven, as well as in the Decision and Order section on page one and in the Decision section on page seven. As mentioned above the parties stipulated, in part, that the compensable injury of (date of injury), does extend to a skull fracture. We note that the parties amended the extent-of-injury issue to exclude the condition of a traumatic brain injury but did not exclude the condition of a skull fracture from the issue. Accordingly, we reverse the ALJ's decision that the compensable injury of (date of injury), does not extend to a skull fracture, and we render a new decision that the compensable injury does extend to a skull fracture to conform to the stipulation made by the parties at the CCH.

MMI AND IR

The ALJ's determinations that the claimant reached MMI on May 11, 2017, and the claimant's IR is 5% are supported by sufficient evidence and are affirmed.

DISABILITY

The ALJ's determination that the claimant had disability beginning on May 12, 2017, through January 25, 2018, is supported by sufficient evidence and is affirmed.

SUMMARY

We affirm that portion of the ALJ's determination that the compensable injury of (date of injury), does not extend to a loss of sense of smell, disc herniation at C6-7, cervical radiculopathy at C6-7, or spinal stenosis at C6-7.

We reverse that portion of the ALJ's determination that the compensable injury of (date of injury), does not extend to a skull fracture and we render a new decision that the compensable injury of (date of injury), does extend to a skull fracture to conform to the stipulation made by the parties at the CCH.

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

We affirm the ALJ's determination that the claimant's IR is 5%.

We affirm the ALJ's determination that the claimant had disability beginning May 12, 2017, through January 25, 2018.

The true corporate name of the insurance carrier is **GREAT MIDWEST 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.**

Veronica L. Ruberto
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge