

APPEAL NO. 190630  
FILED MAY 23, 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 March 13, 2019, with the record closing on March 18, 2019, in (city), Texas, with (administrative law judge) presiding as the administrative law judge (ALJ). The ALJ resolved the disputed issues by determining that: (1) the compensable injury of (date of injury), extends to L5-S1 disc displacement, lumbar spinal stenosis, a lumbar strain, and a left ankle sprain; (2) the compensable injury of (date of injury), does not extend to stenosis, lumbar region without neurogenic claudication, or a left wrist sprain; (3) the respondent/cross-appellant (claimant) has not reached maximum medical improvement (MMI); (4) the claimant's impairment rating (IR) is not ripe for adjudication; and (5) the claimant had disability throughout the period from August 14, 2018, through the date of the CCH.

The appellant/cross-respondent (carrier) appealed, disputing the ALJ's extent-of-injury determination in favor of the claimant, as well as the ALJ's MMI, IR, and disability determinations. The claimant responded, urging affirmance of the appealed determinations. The claimant also cross-appealed, disputing the ALJ's extent-of-injury determination that was unfavorable to her. The carrier responded, urging affirmance of the cross-appealed determination.

DECISION

Affirmed in part and reversed and remanded in part.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury), that extends to a lumbar strain. We note that the stipulation contained in Finding of Fact No. 1.F. incorrectly states the compensable injury extends to a lumbar sprain. The claimant testified she was injured when she stumbled over boxes stacked behind her which caused her to lose her balance and fall.

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) extends to L5-S1 disc displacement and a left ankle sprain, but not to a left wrist sprain is supported by sufficient evidence and is affirmed.

The extent-of-injury issue as agreed to by the parties at the CCH was whether the compensable injury of (date of injury), extends to "L5-S1 disc displacement; spinal stenosis, lumbar region without neurogenic claudication; a lumbar sprain; a left wrist sprain; and a left ankle sprain." The Benefit Review Conference (BRC) report in evidence shows that the issue originally included a lumbar strain rather than sprain; however, the BRC report contains a handwritten correction of lumbar strain to lumbar sprain based on the parties' agreement that the carrier had accepted a lumbar strain, and the condition to be litigated was a lumbar sprain. During the CCH the ALJ noted that the condition of "spinal stenosis, lumbar region without neurogenic claudication" should not have a comma, and he said "I think that's meant to say, spinal stenosis lumbar region without neurogenic claudication" and that he "deleted that comma." Neither party objected. Issue Statement 1 on the Decision and Order did not delete the comma in that condition, and incorrectly identifies lumbar sprain as lumbar strain. The ALJ's decision and order makes findings of fact, conclusions of law, and a decision regarding lumbar strain rather than lumbar sprain.

The ALJ's discussion states the following:

Although there was conflicting expert opinion evidence, [the] [c]laimant proved the compensable injury extends to include . . . L5-S1 disc displacement with resulting spinal stenosis. . . . There was no persuasive expert opinion evidence concerning neurogenic claudication.

The ALJ found in Finding of Fact No. 3 in pertinent part that the compensable injury event of (date of injury), was a producing cause of lumbar spinal stenosis, and in Finding of Fact No. 4 that the compensable injury event of (date of injury), was not a producing cause of stenosis, lumbar region without neurogenic claudication, and was not a producing cause of any enhancement, acceleration, or worsening of that condition. Conclusion of Law Nos. 3 and 4 and the decision all state in pertinent part that the compensable injury extends to lumbar spinal stenosis, but does not extend to stenosis, lumbar region without neurogenic claudication.

The extent-of-injury condition properly before the ALJ included a lumbar sprain and spinal stenosis, lumbar region without neurogenic claudication. We note the discussion reflects the ALJ found no persuasive expert opinion evidence concerning neurogenic claudication, when the extent-of-injury condition in dispute is "without

neurogenic claudication.” The ALJ found the compensable injury extends to lumbar spinal stenosis but not to stenosis, lumbar region without neurogenic claudication. The ALJ made conflicting and inconsistent findings and determinations regarding this condition. Additionally, the ALJ failed to make findings of fact, conclusions of law, or a decision regarding a lumbar sprain, which was properly before him to decide. Accordingly, we reverse the ALJ’s extent-of-injury determination as incomplete, as well as that portion of the ALJ’s determination that the compensable injury of (date of injury), extends to lumbar spinal stenosis but does not extend to stenosis, lumbar region without neurogenic claudication, and remand this issue to the ALJ for further action consistent with this decision.

### **MMI, IR, AND DISABILITY**

We have reversed and remanded a portion of the ALJ’s extent-of-injury determination. We therefore reverse the ALJ’s determinations that the claimant has not reached MMI, the claimant’s IR is not ripe for adjudication, and the claimant had disability throughout the period from August 14, 2018, through the date of the CCH. We remand the issues of MMI, IR, and disability to the ALJ for further action consistent with this decision.

### **SUMMARY**

We affirm that portion of the ALJ’s determination that the compensable injury of (date of injury) extends to L5-S1 disc displacement and a left ankle sprain, but not to a left wrist sprain.

We reverse the ALJ’s extent-of-injury determination as being incomplete and we remand the issue of whether the compensable injury of (date of injury), extends to a lumbar sprain for further action consistent with this decision.

We reverse that portion of the ALJ’s determination that the compensable injury of (date of injury), extends to lumbar spinal stenosis but does not extend to stenosis, lumbar region without neurogenic claudication, and we remand the issue of whether the compensable injury of (date of injury), extends to spinal stenosis, lumbar region without neurogenic claudication to the ALJ for further action consistent with this decision.

We reverse the ALJ’s determination that the claimant has not reached MMI and we remand the issue of MMI to the ALJ for further action consistent with this decision.

We reverse the ALJ’s determination that the claimant’s IR is not ripe for adjudication, and we remand the issue of IR to the ALJ for further action consistent with this decision.

We reverse the ALJ's determination that the claimant had disability throughout the period from August 14, 2018, through the date of the CCH, and we remand the issue of whether the claimant had disability from August 14, 2018, through the date of the CCH to the ALJ for further action consistent with this decision.

### **REMAND INSTRUCTIONS**

On remand the ALJ is to determine whether the compensable injury of (date of injury), extends to a lumbar sprain and spinal stenosis, lumbar region without neurogenic claudication that is consistent and supported by the evidence. The ALJ is then to determine whether the claimant has reached MMI, and if so on what date, and if the claimant has reached MMI, the claimant's IR. The ALJ is also to determine whether the claimant had disability from August 14, 2018, through the date of the CCH.

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 Appeals Panel Decision 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **WORTH CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**PRESIDENT MICHAEL TOOLE  
5500 LOWER BIRDVILLE ROAD  
FORT WORTH, TEXAS 76117.**

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Carisa Space-Beam  
Appeals Judge

CONCUR:

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Cristina Beceiro  
Appeals Judge

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Margaret L. Turner  
Appeals Judge