

APPEAL NO. 190663
FILED MAY 16, 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 September 27, 2018, and February 27, 2019, with the record closing on March 8, 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), extends to a right shoulder torn labrum and herniation with radiculopathy at C4-5, C5-6, and C6-7; and (2) the respondent (claimant) had disability resulting from the compensable injury of (date of injury), beginning on March 20, 2018, and continuing through the date of the CCH. The appellant (carrier) appealed, disputing the ALJ's determinations of disability and the extent of the injury. The claimant responded, urging affirmance of the disputed determinations.

DECISION

Affirmed in part and reversed and remanded in part.

The parties stipulated that the claimant sustained a compensable injury on (date of injury), in the form of a right shoulder strain and cervical strain. The claimant testified that she was pulling a dolly with merchandise that weighed approximately 250 pounds up a curb when she felt a pop in her right shoulder and neck area.

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 of (date of injury), extends to a right shoulder torn labrum and herniation with radiculopathy at C4-5, C5-6, and C6-7 is supported by sufficient evidence and is affirmed.

DISABILITY

The parties agreed at the CCH that the period of disability in dispute was March 16, 2018, through the CCH. The ALJ found in Finding of Fact No. 4 that the

compensable injury of (date of injury), was a cause of the claimant's inability to obtain and retain employment at wages equivalent to her pre-injury wages beginning on March 20, 2018, and continuing through the date of the CCH. The ALJ in Conclusion of Law No. 4 determined that the claimant had disability beginning on March 20, 2018, and continuing through the date of the CCH. The ALJ states in the summary paragraph on page one of the Decision and Order that the claimant had disability from March 16, 2018, to the CCH but determined in the decision portion of the decision and order that the claimant had disability resulting from the compensable injury of (date of injury), beginning on March 20, 2018, and continuing through the date of the CCH.

That portion of the ALJ's determination that the claimant had disability resulting from the compensable injury of (date of injury), beginning on March 20, 2018, and continuing through the date of the CCH is supported by sufficient evidence and is affirmed.

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. As previously noted the period of disability in dispute at the CCH began on March 16, 2018. However, the ALJ failed to make a finding of fact or conclusion of law of whether the claimant had disability from March 16 through March 19, 2018. Further, the decision in the summary paragraph on page one was not consistent with the decision portion of the decision and order regarding the beginning period of disability. 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, and APD 182482, decided December 19, 2018. We remand that portion of the disability issue to the ALJ to determine whether the claimant had disability from March 16 through March 19, 2018.

SUMMARY

We affirm the ALJ's determination that the compensable injury of (date of injury), extends to a right shoulder torn labrum and herniation with radiculopathy at C4-5, C5-6, and C6-7.

We affirm that portion of the ALJ's determination that the claimant had disability resulting from the compensable injury of (date of injury), beginning on March 20, 2018, through the CCH.

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 from March 16 through March 19, 2018.

REMAND INSTRUCTIONS

On remand the ALJ is to make findings of fact, conclusions of law, and a decision regarding whether the claimant had disability from March 16 through March 19, 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

**RICHARD J. GERGASKO, PRESIDENT
2200 ALDRICH STREET
AUSTIN, TEXAS 78723.**

Margaret L. Turner
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Carisa Space-Beam
Appeals Judge