

APPEAL NO. 192144  
FILED FEBRUARY 5, 2020

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 July 23, 2019, with the record closing on November 1, 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 an aggravation of degenerative anterolisthesis at L4-5, facet arthrosis at L4-5, aggravation of degenerative anterolisthesis at L5-S1, facet arthrosis at L5-S1, and coccyx contusion; (2) the compensable injury of (date of injury), does not extend to sacral contusion; (3) the appellant/cross-respondent (claimant) reached maximum medical improvement (MMI) on January 3, 2018; (4) the claimant's impairment rating (IR) is five percent; and (5) the claimant had disability from January 4 through December 11, 2018, but did not have disability from December 12, 2018, through the date of the CCH.

The claimant appealed the ALJ's determinations that the compensable injury does not extend to a sacral contusion and that she did not have disability from December 12, 2018, through the date of the CCH. Additionally, the claimant appealed the ALJ's determinations that she reached MMI on January 3, 2018, and that her IR is five percent. The respondent/cross-appellant (self-insured) responded, urging affirmance of those determinations appealed by the claimant. The self-insured cross-appealed, disputing the ALJ's determination that the compensable injury extends to an aggravation of degenerative anterolisthesis at L4-5, facet arthrosis at L4-5, aggravation of degenerative anterolisthesis at L5-S1, facet arthrosis at L5-S1, and coccyx contusion. The appeal file does not contain a response to the self-insured's appeal. That portion of the ALJ's determination that the claimant had disability from January 4 through December 11, 2018, was not appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed as reformed in part and reversed and remanded in part.

The claimant testified that she was injured when she fell due to water on the floor. The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury), and that the self-insured has accepted a lumbar contusion, lumbar strain, thoracic strain, and a pelvic contusion. We note that the record reflects the parties stipulated that the claimant worked for the State of Texas, specifically the (TDCJ), on (date of injury). We note that the ALJ inadvertently omitted "specifically, the

[TDCJ]" in Finding of Fact 1.B. Accordingly, we reform Finding of Fact 1.B. to include "specifically, the [TDCJ]" to conform to the actual stipulation of the parties.

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 an aggravation of degenerative anterolisthesis at L4-5, facet arthrosis at L4-5, aggravation of degenerative anterolisthesis at L5-S1, facet arthrosis at L5-S1, and coccyx contusion is supported by sufficient evidence and is affirmed.

The ALJ's determination that the compensable injury of (date of injury), does not extend to sacral contusion is supported by sufficient evidence and is affirmed.

### **DISABILITY**

The ALJ's determination that the claimant did not have disability from December 12, 2018, through the date of the CCH is supported by sufficient evidence and is affirmed.

### **MMI/IR**

Section 401.011(30)(A) defines MMI as "the earliest date after which, based on reasonable medical probability, further material recovery from or lasting improvement to an injury can no longer reasonably be anticipated." Section 408.1225(c) provides that the report of the designated doctor has presumptive weight, and the Texas Department of Insurance, Division of Workers' Compensation (Division) shall base its determination of whether the employee has reached MMI on the report of the designated doctor unless the preponderance of the other medical evidence is to the contrary. Section 408.125(c) provides that the report of the designated doctor shall have presumptive weight, and the Division shall base the IR on that report unless the preponderance of the other medical evidence is to the contrary, and that, if the preponderance of the medical evidence contradicts the IR contained in the report of the designated doctor chosen by the Division, the Division shall adopt the IR of one of the other doctors. 28

TEX. ADMIN. CODE § 130.1(c)(3) (Rule 130.1(c)(3)) provides, in part, that the assignment of an IR for the current compensable injury shall be based on the injured employee's condition as of the MMI date considering the medical record and the certifying examination.

(Dr. D), the Division-appointed designated doctor, examined the claimant on December 12, 2018, and certified that the claimant reached MMI on January 3, 2018, with a five percent 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). In his narrative report dated December 12, 2018, Dr. D considered and rated the following conditions: thoracic strain, lumbar contusion, lumbar strain, and pelvic contusion. The ALJ correctly noted in her discussion of the evidence that Dr. D did not consider and rate the entire compensable injury and, therefore, his certification could not be adopted.

(Dr. G), a referral doctor acting in place of the treating doctor, examined the claimant on February 22, 2018, and again on April 16, 2019, and certified based on each examination that the claimant had not yet reached MMI. The ALJ correctly noted in her discussion of the evidence that Dr. G did not consider and rate the entire compensable injury and so her certification could not be adopted.

After the CCH, the ALJ sent a presiding officer's directive to Dr. D asking him to consider and rate the following conditions: lumbar contusion, lumbar strain, thoracic strain, pelvic contusion, aggravation of degenerative anterolisthesis at L4-5, aggravation of degenerative anterolisthesis at L5-S1, and coccyx contusion. The ALJ told Dr. D to rate these compensable conditions only and not to rate any other conditions. Dr. D re-examined the claimant on September 11, 2019, and rated the conditions as requested by the ALJ and certified that the claimant reached MMI on January 3, 2018, with a five percent IR. The ALJ determined that the claimant reached MMI on January 3, 2018, with a five percent IR as certified by Dr. D based on the examination of September 11, 2019.

As previously noted, the ALJ determined that the compensable injury extends to facet arthrosis at L4-5 and facet arthrosis at L5-S1. This determination has been affirmed. Dr. D did not consider and rate facet arthrosis at L4-5 and facet arthrosis at L5-S1. Because Dr. D did not consider and rate the entire compensable injury his certification cannot be adopted. There is no certification in evidence that considers and rates the entire compensable injury. Accordingly, we reverse the ALJ's determination that the claimant reached MMI on January 3, 2018, and that the claimant's IR is five percent and remand the issues of MMI and IR to the ALJ for further action consistent with this opinion.

## **SUMMARY**

We affirm the ALJ's determination that the compensable injury of (date of injury), extends to an aggravation of degenerative anterolisthesis at L4-5, facet arthrosis at L4-5, aggravation of degenerative anterolisthesis at L5-S1, facet arthrosis at L5-S1, and coccyx contusion.

We affirm the ALJ's determination that the compensable injury of (date of injury), does not extend to sacral contusion.

We affirm the ALJ's determination that the claimant did not have disability from December 12, 2018, through the date of the CCH.

We reform stipulation 1.B. to read as follows: On (date of injury), the claimant was an employee of the State of Texas, specifically, the (TDCJ), employer.

We reverse the ALJ's determination that the claimant reached MMI on January 3, 2018, and remand the MMI issue to the ALJ for further action consistent with this decision.

We reverse the ALJ's determination that the claimant's IR is five percent, and remand the IR issue to the ALJ for further action consistent with this decision.

## **REMAND INSTRUCTIONS**

Dr. D is the designated doctor in this case. On remand the ALJ is to determine whether Dr. D is still qualified and available to be the designated doctor. If Dr. D is no longer qualified or available to serve as the designated doctor, then another designated doctor is to be appointed to determine the claimant's date of MMI and IR for the (date of injury), compensable injury. On remand, the ALJ is to inform the designated doctor that the compensable injury of (date of injury), extends to a lumbar contusion, lumbar strain, thoracic strain, pelvic contusion, aggravation of degenerative anterolisthesis at L4-5, facet arthrosis at L4-5, aggravation of degenerative anterolisthesis at L5-S1, facet arthrosis at L5-S1, and coccyx contusion but does not extend to a sacral contusion. The ALJ is to request the designated doctor to give an opinion on the claimant's date of MMI and rate the entire compensable injury in accordance with the AMA Guides considering the medical records and the certifying examination.

The parties are to be provided with the designated doctor's new MMI/IR certification and are to be allowed an opportunity to respond. The ALJ is then to make a determination of MMI and IR consistent with this decision.

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 Division, 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 **STATE OFFICE OF RISK MANAGEMENT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

For service in person the address is:

**STEPHEN S. VOLLBRECHT, EXECUTIVE DIRECTOR  
300 W. 15TH STREET  
WILLIAM P. CLEMENTS, JR. STATE OFFICE BUILDING, 6TH FLOOR  
AUSTIN, TEXAS 78701.**

For service by mail the address is:

**STEPHEN S. VOLLBRECHT, EXECUTIVE DIRECTOR  
P.O. BOX 13777  
AUSTIN, TEXAS 78711-3777.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Cristina Beceiro  
Appeals Judge

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Carisa Space-Beam  
Appeals Judge