

APPEAL NO. 200228  
FILED MAY 1, 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 August 29, 2019, and November 13, 2019, with the record closing on January 21, 2020, 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 first certification of maximum medical improvement (MMI) and assigned impairment rating (IR) from (Dr. W), on September 26, 2009, did not become final under Section 408.123 and 28 TEX. ADMIN. CODE § 130.12 (Rule 130.12); (2) the appellant/cross-respondent (claimant) reached MMI on December 19, 2010; (3) the claimant's IR is five percent; and (4) the claimant had disability resulting from the compensable injury of (date of injury), from June 23, 2009, through December 19, 2010.

The claimant appealed the ALJ's decision, arguing that the ALJ failed to make any findings of fact or conclusions of law regarding the average weekly wage (AWW) issue. The respondent/cross-appellant (carrier) responded. The carrier cross-appealed, disputing both the issues of AWW and disability.

The ALJ's determinations that: the first certification of MMI and assigned IR from Dr. W on September 26, 2009, did not become final under Section 408.123 and Rule 130.12; the claimant reached MMI on December 19, 2010; and that the claimant's IR is five percent were not appealed and became final pursuant to Section 410.169.

**DECISION**

Reversed and remanded.

The parties stipulated, in part, that on (date of injury), the claimant sustained a compensable injury, which consists of a herniated nucleus pulposus of the lower back, L4-L5 and L5-S1 with radiating pain in the left leg; from June 23, 2009, through January 23, 2010, the claimant earned \$150.00 a week salvaging metal; and from January 24, 2010, through December 19, 2010, the claimant worked 30 hours a week cleaning offices for \$8.50 per hour. The claimant testified that he was injured when moving a sheet of heavy metal. Although not initially reported as a disputed issue in the Benefit Review Conference Report, the parties agreed to add the issue of AWW at the CCH. Additionally, the parties agreed to modify the dates of disability in dispute.

**AWW**

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. Although in the opening paragraph of the Decision and Order the ALJ determined the AWW is \$618.00, the ALJ failed to make any findings of fact or conclusions of law on the AWW issue. Further, the ALJ failed to make a determination of AWW in the decision section of the decision and order. Because the ALJ failed to make a determination on the AWW issue that was before her, 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 the AWW issue to the ALJ for further action consistent with this decision.

### **DISABILITY**

Section 401.011(16) defines disability as the inability because of a compensable injury to obtain and retain employment at wages equivalent to the pre-injury wage. As noted above, the ALJ failed to make findings of fact and conclusions of law regarding the AWW. Accordingly, we reverse the ALJ's determination that the claimant had disability resulting from the compensable injury of (date of injury), from June 23, 2009, through December 19, 2010, and remand the disability issue to the ALJ for further action consistent with this decision.

### **SUMMARY**

We reverse the ALJ's decision as being incomplete and remand the AWW issue to the ALJ for further action consistent with this decision.

We reverse the ALJ's decision that the claimant had disability resulting from the compensable injury of (date of injury), from June 23, 2009, through December 19, 2010, and remand the disability issue to the ALJ for further action consistent with this decision.

### **REMAND INSTRUCTIONS**

On remand the ALJ is to make findings of fact, conclusions of law, and a decision regarding the AWW.

After making a determination of the AWW, the ALJ is to make a determination regarding whether the claimant had disability resulting from the compensable injury of (date of injury), from June 23, 2009 through December 19, 2010.

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 **FARMINGTON CASUALTY COMPANY, A SUBSIDIARY OF THE TRAVELERS INDEMNITY COMPANIES** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
d/b/a CSC-LAWYERS INCORPORATING SERVICE CO.  
211 EAST 7TH STREET, SUITE 620  
AUSTIN, TEXAS 78701-3218.**

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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