APPEAL NO. 200489
FILED APRIL 27, 2020

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). An expedited contested case hearing (CCH) was held on February 18, 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. H) on March 28, 2019, became final under Section 408.123 and 28 TEX. ADMIN. CODE § 130.12 (Rule 130.12); and (2) (Dr. Q) was not appointed to serve as designated doctor in accordance with Rule 127.1. The appellant (claimant) appealed the ALJ's determinations. The respondent (carrier) responded, urging affirmance of the ALJ's determinations.

DECISION

Affirmed as reformed.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury). The record established the claimant, a sandblaster for the employer, underwent a left thumb amputation as a result of the injury he sustained at work on (date of injury). The evidence reflected that Dr. H, a doctor referred by the treating doctor, examined the claimant on March 21, 2019, and certified on March 28, 2019, that the claimant reached MMI on February 18, 2019, with a 14% IR.

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).

The parties stipulated at the CCH that on (date of injury), the claimant was the employee of (employer). However, the decision incorrectly states in Finding of Fact No. 1.B. that on (date of injury), the claimant was the employee of (employer). We reform Finding of Fact No. 1.B. to state that on (date of injury), the claimant was the employee of (employer), to conform to the stipulation made by the parties at the CCH.

The ALJ found that the MMI/IR certification from Dr. H on March 28, 2019, was the first valid certification of MMI and IR for the injury of (date of injury). The ALJ also

found that the claimant received written notice of Dr. H's MMI/IR certification by verifiable means on April 12, 2019. In evidence is a Notice of MMI and Permanent Impairment dated April 10, 2019, from the carrier addressed to the claimant, which notes Dr. H's March 28, 2019, MMI/IR certification was attached. Also, in evidence is tracking documentation from the United States Postal Service reflecting that the Notice of MMI and Permanent Impairment and Dr. H's March 28, 2019, MMI/IR certification were delivered to the claimant's correct address on April 12, 2019. The ALJ's findings are supported by sufficient evidence and are affirmed.

The ALJ found in Finding of Fact No. 6 that "the 90th day after April 13, 2019, was July 11, 2019." As previously noted, we have affirmed the ALJ's finding that the claimant received written notice of Dr. H's MMI/IR certification by verifiable means on April 12, 2019.

Section 408.123(e) provides that, except as otherwise provided by Section 408.123, an employee's first valid certification of MMI and first valid assignment of an IR is final if the certification or assignment is not disputed before the 91st day after the date written notification of the certification or assignment is provided to the employee and the carrier by verifiable means. Rule 130.12(b) provides in pertinent part that the first MMI/IR certification must be disputed within 90 days of delivery of written notice through verifiable means, and that the 90-day period begins on the day after the written notice is delivered to the party wishing to dispute a certification of MMI or an IR assignment, or both. In the case on appeal, the claimant received Dr. H's MMI/IR certification by verifiable means on April 12, 2019, the 90-day period to dispute began on April 13, 2019, and the claimant must have disputed Dr. H's MMI/IR certification by July 12, 2019, not July 11, 2019. We reform Finding of Fact No. 6 to state that the 90th day after April 13, 2019, was July 12, 2019.

The ALJ found in Finding of Fact No. 7 that the claimant did not submit a Request to Schedule, Reschedule, or Cancel a Benefit Review Conference (BRC), or to Proceed Directly to CCH (DWC-45) or a Request for Designated Doctor Examination (DWC-32) to dispute Dr. H's March 28, 2019, MMI/IR certification on or before July 11, 2019. However, as noted above the 90-day period to dispute ran from April 13, 2019, through July 12, 2019. Accordingly, we reform Finding of Fact No. 7 to reflect that the claimant did not submit a DWC-45 or a DWC-32 to dispute Dr. H's March 28, 2019, MMI/IR certification on or before July 12, 2019.

The ALJ found in an unappealed finding of fact that the claimant filed a DWC-32 on January 7, 2020, and it is undisputed by the parties that the claimant did not dispute Dr. H's MMI/IR certification within the 90-day period. The ALJ also found that there was no compelling medical evidence of a significant error by Dr. H in applying the

appropriate 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) or in calculating the IR, a clearly mistaken diagnosis or a previously undiagnosed medical condition, or improper or inadequate treatment of the injury before the date of Dr. H's MMI/IR certification. These findings are supported by sufficient evidence and are affirmed.

The ALJ's determination that the first certification of MMI and assigned IR from Dr. H on March 28, 2019, became final under Section 408.123 and Rule 130.12 is supported by sufficient evidence and is affirmed.

The ALJ's determination that Dr. Q was not appointed to serve as designated doctor in accordance with Rule 127.1 is supported by sufficient evidence and is affirmed.

SUMMARY

We affirm the ALJ's determination that the first certification of MMI and assigned IR from Dr. H on March 28, 2019, became final under Section 408.123 and Rule 130.12.

We affirm the ALJ's determination that Dr. Q was not appointed to serve as designated doctor in accordance with Rule 127.1.

We reform Finding of Fact No. 1.B to read as follows: On (date of injury), the claimant was the employee of (employer).

We reform Finding of Fact No. 6 to read as follows: The 90th day after April 13, 2019, was July 12, 2019.

We reform Finding of Fact No. 7 to reflect that the claimant did not submit a DWC-45 or a DWC-32 to dispute Dr. H's March 28, 2019, MMI/IR certification on or before July 12, 2019.

The true corporate name of the insurance carrier is **ACE AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

CT CORPORATION SYSTEM
1999 BRYAN STREET, SUITE 900
DALLAS, TEXAS 75201-3136.

____
Carisa Space-Beam
Appeals Judge

CONCUR:

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Cristina Beceiro
Appeals Judge

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Margaret L. Turner
Appeals Judge