

APPEAL NO. 201060
FILED SEPTEMBER 29, 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 June 15, 2020, 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 (date of injury), compensable injury extends to right ankle strain and low back strain; (2) the (date of injury), compensable injury does not extend to L5-S1 intervertebral disc derangement; (3) the respondent/cross-appellant (claimant) reached maximum medical improvement (MMI) on May 28, 2019; and (4) the claimant's impairment rating (IR) is zero percent.

The appellant/cross-respondent (carrier) appealed the ALJ's decision, contending that the ALJ failed to make Findings of Fact, Conclusions of Law, and a decision regarding an extent-of-injury condition the parties agreed to add at the CCH. The appeal file does not contain a response from the claimant to the carrier's appeal. The claimant cross-appealed the ALJ's extent-of-injury determination that was adverse to him, as well as the ALJ's MMI and IR determinations. The claimant also contended that the ALJ failed to address the agreed-upon extent-of-injury condition. The carrier responded, urging affirmance of the ALJ's determinations.

The ALJ's determination that the (date of injury), compensable injury extends to right ankle strain and low back strain was not appealed and has become final pursuant to Section 410.169.

DECISION

Reversed and remanded.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury), that extends to a head contusion, lumbar contusion, and right ankle contusion, and that (Dr. T) was appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division) as designated doctor to determine MMI, IR, disability, and the extent of the compensable injury. The claimant testified he was injured on (date of injury), when he fell about eight feet from a plywood platform to the concrete below while he was dumping wood into a bin.

EXTENT OF INJURY

Both parties contend on appeal that the ALJ failed to address an extent-of-injury condition that was added at the CCH by the agreement of the parties. The record

reflects that the carrier requested to add the issue of whether the compensable injury extended to L4-5 intervertebral disc derangement, and that the claimant agreed to add this condition. The ALJ indicated at the CCH this condition would be included in his decision. However, the ALJ did not include this condition in the extent-of-injury issue statement, nor did he make any findings of fact, conclusions of law, or a decision on that condition. We therefore reverse the decision as incomplete, and we remand the issue of whether the compensable injury extends to L4-5 intervertebral disc derangement to the ALJ for further action consistent with this decision.

The ALJ determined the compensable injury does not extend to L5-S1 intervertebral disc derangement, which was one of the disputed conditions before him to decide. The ALJ stated the following in his discussion:

Dr. T unpersuasively includes L5-S1 intervertebral disc derangement.

On November 13, 2019, [the] [c]laimant was examined by (Dr. E), M.D., as the required medical examination physician. Dr. E persuasively does not include the L5-S1 intervertebral disc disorder as pre-existing and degenerative in nature.

The claimant contends the ALJ erred in stating that Dr. E “persuasively does not include the L5-S1 intervertebral disc disorder as pre-existing and degenerative in nature.” The claimant argues Dr. E did not at any point include, exclude, or discuss L5-S1 intervertebral disc derangement in his report. Dr. E states in his narrative report that the disputed conditions he was asked to address were strain of the right ankle and strain of the lower back. Although Dr. E references a June 7, 2019, MRI taken of levels L1-S1 as showing an impression of multilevel degenerative change, Dr. E does not specifically discuss L5-S1 intervertebral disc derangement or opine on whether that condition is part of the compensable injury. While the ALJ can accept or reject in whole or in part Dr. E’s report, his decision in this case is based, in part, upon a misstatement of Dr. E’s report. Accordingly, we reverse the ALJ’s determination that the compensable injury does not extend to L5-S1 intervertebral disc derangement, and we remand the issue of whether the compensable injury extends to L5-S1 intervertebral disc derangement to the ALJ for further action consistent with this decision.

MMI/IR

Because we have reversed and remanded the extent-of-injury issue, we also reverse the ALJ’s determinations that the claimant reached MMI on May 28, 2019, and that the claimant’s IR is zero percent, and we remand the issues of MMI and IR to the ALJ for further action consistent with this decision.

SUMMARY

We reverse the ALJ's decision as incomplete, and we remand the issue of whether the compensable injury extends to L4-5 intervertebral disc derangement to the ALJ for further action consistent with this decision.

We reverse the ALJ's determination that the compensable injury does not extend to L5-S1 intervertebral disc derangement, and we remand the issue of whether the compensable injury extends to L5-S1 intervertebral disc derangement to the ALJ for further action consistent with this decision.

We reverse the ALJ's determination that the claimant reached MMI on May 28, 2019, 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 zero percent, and we remand the issue of IR to the ALJ for further action consistent with this decision.

REMAND INSTRUCTIONS

On remand the ALJ is to correct his misstatement of Dr. E's report. The ALJ is to consider all of the evidence in the record and make determinations on whether the compensable injury extends to L4-5 intervertebral disc derangement and L5-S1 intervertebral disc derangement. The ALJ is then to make determinations on MMI and IR.

Dr. T is the designated doctor in this case. If necessary, on remand the ALJ is to determine whether Dr. T is still qualified and available to be the designated doctor. If Dr. T is still qualified and available to serve as the designated doctor and if necessary, the ALJ is to request Dr. T to determine the claimant's MMI and IR for the (date of injury), compensable injury. If Dr. T is no longer qualified or available to serve as the designated doctor and it is necessary for the ALJ to obtain a new MMI/IR certification, then another designated doctor is to be appointed to determine the claimant's MMI and IR for the (date of injury), compensable injury. The parties are to be provided with the designated doctor's new certification of MMI and IR and are to be allowed an opportunity to respond. The ALJ is then to make a determination on 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 **AMERISURE MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**ROBIN MILLER
5221 NORTH O'CONNOR BOULEVARD, SUITE 400
IRVING, TEXAS 75039-3711.**

Carisa Space-Beam
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Margaret L. Turner
Appeals Judge