

APPEAL NO. 201204
FILED SEPTEMBER 28, 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 25, 2020, with the record closing on July 17, 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 compensable injury sustained on (date of injury), does not extend to an L4-5 disc bulge, disc bulges from C4-5 through C6-7, a bone spur distal clavicle of the left shoulder, cervical radiculopathy, or carpal tunnel syndrome (CTS); (2) the appellant (claimant) reached maximum medical improvement (MMI) on April 16, 2019; and (3) the claimant's impairment rating (IR) is 10%. The claimant appealed, disputing the ALJ's determinations of extent of injury, MMI, and IR. The respondent (self-insured) responded, urging affirmance of the disputed extent of injury, MMI, and IR determinations.

DECISION

Affirmed in part and reversed and remanded in part.

The parties stipulated, in part, that on (date of injury), the claimant sustained a compensable injury which extends to at least a lumbar sprain/strain, bilateral knee sprains/strains, left shoulder sprain/strain, left elbow sprain/strain, left hip sprain/strain, left thumb sprain/strain, and cervical sprain/strain; the Texas Department of Insurance, Division of Workers' Compensation (Division) appointed (Dr. H) as designated doctor for the issues of MMI, IR, extent of injury, and return to work; and that the date of statutory MMI in this case is November 22, 2019. The claimant testified that she was injured on (date of injury), when she tripped and fell on her left side while walking into the employer's shop.

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

That portion of the ALJ's determination that the compensable injury of (date of injury), does not extend to an L4-5 disc bulge, disc bulges from C4-5 through C6-7, a bone spur distal clavicle of the left shoulder, cervical radiculopathy, or CTS is supported by sufficient evidence and is affirmed.

The Benefit Review Conference (BRC) Report listed the disputed extent-of-injury issue as follows: Does the compensable injury of (date of injury), extend to an L4-5 disc bulge, an L5-S1 disc bulge, disc bulges from C4-5 through C6-7, a bone spur distal clavicle of the left shoulder, cervical radiculopathy, and CTS? The parties agreed at the CCH on the record that the disputed extent-of-injury issue was as listed in the BRC report. The extent-of-injury issue was not modified at or after the CCH. The ALJ failed to make a finding of fact, conclusion of law, or decision on the L5-S1 disc bulge.

28 TEX. ADMIN. CODE § 142.16(a) (Rule 142.16(a)) provides, in part, 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. Because the ALJ failed to make a determination on the complete extent-of-injury issue that was properly before her to determine, the ALJ's decision is reversed as being incomplete. See Appeals Panel Decision (APD) 150510, decided April 21, 2015. Accordingly, we reverse the ALJ's decision as being incomplete and remand that portion of the extent-of-injury issue to the ALJ as follows: Does the compensable injury of (date of injury), extend to an L5-S1 disc bulge?

MMI/IR

We have reversed and remanded a portion of the ALJ's extent-of-injury determination. We therefore reverse the ALJ's determinations that the claimant reached MMI on April 16, 2019, and that the claimant's IR is 10%. We remand the issues of MMI and IR to the ALJ for further action consistent with this decision.

Pursuant to Section 410.203(c), the Appeals Panel may not remand a case more than once. Given that we are remanding this case for the ALJ to make determinations on whether the compensable injury extends to an L5-S1 disc bulge, MMI, and IR, we note that the hip range of motion (ROM) measurement for the left hip internal rotation documented in the body of the narrative report from Dr. H does not match the measurement provided for left hip internal rotation in the IR section of Dr. H's report. Further, we note that in his narrative report Dr. H noted the ROM measurements he used for assessing impairment of the left hip and the total impairment he assessed. However, Dr. H did not assign a specific impairment for each measurement. Using the measurements provided by Dr. H for the left hip ROM results in 8% impairment rather than the 6% impairment assessed by Dr. H. On remand, the ALJ should request Dr. H to provide clarification on the impairment assessed for the ROM of the left hip.

SUMMARY

We affirm that portion of the ALJ's determination that the compensable injury of (date of injury), does not extend to an L4-5 disc bulge, disc bulges from C4-5 through C6-7, a bone spur distal clavicle of the left shoulder, cervical radiculopathy, or CTS.

We reverse the ALJ's extent-of-injury determination as being incomplete and remand the extent-of-injury determination to the ALJ to determine whether the compensable injury of (date of injury), extends to an L5-S1 disc bulge.

We reverse the ALJ's determination that the claimant reached MMI on April 16, 2019, 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 10% and remand the IR 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 determination as to whether the compensable injury of (date of injury), extends to an L5-S1 disc bulge.

Dr. H is the designated doctor in this case. On remand, the ALJ is to determine whether Dr. H is still qualified and available to be the designated doctor. If Dr. H 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 MMI and IR for the (date of injury), compensable injury.

After determining the extent of the compensable injury, the ALJ should inform Dr. H of the conditions which are part of the compensable injury. The ALJ is to request that Dr. H clarify the correct ROM measurement for the internal rotation of the left hip and to explain specifically how he assessed impairment for the left hip.

The parties are to be provided with the new report from Dr. H and given an opportunity to respond. The ALJ is then to make a determination of MMI and IR considering the entire compensable injury supported by the evidence.

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 APD 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **CITY OF DALLAS (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**BILIERAE JOHNSON
1500 MARILLA, 5D SOUTH
DALLAS, TEXAS 75201.**

Margaret L. Turner
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Carisa Space-Beam
Appeals Judge