

APPEAL NO. 201283
FILED OCTOBER 27, 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 20, 2020, in (city), Texas, with (administrative law judge) presiding as the administrative law judge (ALJ). The ALJ resolved the disputed issue by deciding that the appellant (claimant) did not have disability from an injury sustained on (date of injury), from April 1, 2020, through the date of the CCH. The claimant appealed, arguing that the ALJ's disability determination is so against the great weight and preponderance of the evidence as to be manifestly unjust. The claimant additionally filed a "Motion to Make Corrections to the Decision and Order" to correct the conditions of the compensable injury to which the parties stipulated at the CCH. The appeal file did not contain a response from the respondent (carrier).

DECISION

Reversed and remanded.

The parties stipulated on the record, in part, that the claimant sustained a compensable injury on (date of injury), that consisted of a right hip contusion, right thigh contusion, and lumbar sprain/strain. However, in Finding of Fact No. 1.D. of the decision and order, the ALJ mistakenly wrote that the parties stipulated that the compensable injury consisted of a right hip contusion and right thigh contusion. The claimant testified that he was injured when he picked up a box filled with product and turned and tripped over a metal rail, falling to the floor.

Section 401.011(16) provides that disability means the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage. The claimant has the burden to prove that he had disability as defined by Section 401.011(16). Disability is a question of fact to be determined by the ALJ. See Appeals Panel Decision (APD) 042097, decided October 18, 2004. Disability can be established by a claimant's testimony alone, even if contradictory of medical testimony. APD 041116, decided July 2, 2004. The claimant need not prove that the compensable injury was the sole cause of his or her disability, only that it was a producing cause. APD 042097.

The ALJ stated in the discussion section of her decision and order that "[the] [c]laimant's testimony was credible about his physical condition, but at the time of this hearing, the accepted compensable injury was a right hip contusion and right thigh contusion." The ALJ further noted that the medical treatment received was not for the right hip and thigh contusions. A review of the record reflects the parties stipulated that

a lumbar sprain/strain was also part of the compensable injury. The ALJ did not consider all of the conditions which comprise the compensable injury when making her determination of disability. Accordingly, we reverse the ALJ's determination that the claimant did not have disability from April 1, 2020, through the date of the CCH and remand the disability issue to the ALJ for further action consistent with this decision.

REMAND INSTRUCTIONS

On remand the ALJ is to correct the stipulation at Finding of Fact No. 1.D. of the parties of the conditions that comprise the compensable injury of (date of injury). The ALJ is then to make a determination of disability from April 1, 2020, through the date of the CCH supported by the evidence considering all of the conditions that are part of the compensable injury. We note the street name of the carrier's registered agent for service of process is misspelled in the decision. Additionally, the ALJ incorrectly stated the carrier's name as "Ace American Insurance Company Corporation." The ALJ should correct the spelling of the street name for carrier's registered agent and state the correct name of the carrier.

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 **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.**

Margaret L. Turner
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Carisa Space-Beam
Appeals Judge