

APPEAL NO. 201337
FILED NOVEMBER 6, 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 10, 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 (date of injury), compensable injury does not extend to an injury to the lumbar spine with the following diagnoses: contusion, a disc bulge at L3-4, spondylolisthesis at L4-5, or a disc bulge at L5-S1 with a right L5 pars intervertebral fracture; and (2) the appellant (claimant) does not have disability from February 24, 2020, continuing through the date of the CCH as a result of the (date of injury), compensable injury. The claimant appealed the ALJ's determinations. The respondent (self-insured) responded, urging affirmance of the ALJ's determinations.

DECISION

Reversed and remanded.

The parties stipulated, in part, that on (date of injury), the claimant sustained a compensable injury at least in the form of a left forearm abrasion skin tear. We note that the stipulation in Finding of Fact No. 1.D. states the claimant sustained a compensable injury at least in the form of a left forearm abrasion and tear. The claimant, a registered nurse, testified he was injured while assisting a coworker being attacked by an upset patient.

EXTENT OF INJURY

The record reflects that at the CCH the ALJ asked the parties whether a sprain/strain was also being alleged as part of the injury to the lumbar spine. The ombudsman replied "yes." When questioned by the ALJ about adding the sprain/strain, the self-insured's attorney stated he was "not going to object" to the addition of that condition. The ALJ stated on the record that she was going to add a sprain/strain to the extent-of-injury issue. However, the ALJ did not include this condition in the extent-of-injury issue statement, nor did she 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 an injury to the lumbar spine with the diagnosis of a sprain/strain to the ALJ for further action consistent with this decision.

The ALJ determined that the compensable injury does not extend to a lumbar contusion, a disc bulge at L3-4, spondylolisthesis at L4-5, or a disc bulge at L5-S1 with

a right L5 pars particular fracture. The ALJ noted in the discussion portion of the decision that “[a]side from the lumbar contusion, causation to the remaining conditions is a matter that is sufficiently complex that falls outside the common knowledge and experience of a layperson” and as such requires expert medical causation evidence. The ALJ noted that the claimant relied upon various medical records from his treating doctor, (Dr. U), and stated the following:

. . . the medical records from [Dr. U] do not mention the compensable injury which had occurred on (date of injury). The medical records consistently documented that on “8/5/19 [the claimant] was working on his yard and developed lumbar pain. He states the pain radiated from [the] right gluteal, anterior, posterior, and lateral thigh, anterior lower leg and anterior of his foot. He states right sided lumbar pain 15 years ago.” Again, there was no mention of the fall occurring on (date of injury).

The claimant stated in his appeal that Dr. U made proper notation of his injury and the needed treatment. While the ALJ is correct in saying the record contains various medical records from Dr. U that do not mention the (date of injury), compensable injury, the record also contains two medical records from Dr. U that do mention the (date of injury), compensable injury. This first of these records is an office note dated April 29, 2020, in which Dr. U notes the following:

On [(date of injury)] while at work the [claimant] assisted a coworker that was being assaulted by a patient. When he tried to “bear hug” the violent patient all [three] loss of [sic] footing and fell backwards landing on top of [the claimant].

The second record is an office note dated July 13, 2020, in which Dr. U again describes the (date of injury), incident at work as he had in his previous office note.

The ALJ’s statements that the medical records from Dr. U do not mention the compensable injury which had occurred on (date of injury), is a misstatement of the evidence. While the ALJ can accept or reject in whole or in part Dr. U’s opinion, the ALJ’s decision in this case is based, in part, on a misstatement of the medical evidence in the record. Accordingly, we reverse the ALJ’s determination that the (date of injury), compensable injury does not extend to an injury to the lumbar spine with the following diagnoses: contusion, a disc bulge at L3-4, spondylolisthesis at L4-5, or a disc bulge at L5-S1 with a right L5 pars particular fracture, and we remand the issue of whether the (date of injury), compensable injury extends to an injury to the lumbar spine with the following diagnoses: contusion, a disc bulge at L3-4, spondylolisthesis at L4-5, or a disc bulge at L5-S1 with a right L5 pars particular fracture to the ALJ for further action consistent with this decision.

DISABILITY

Because we have reversed and remanded the extent-of-injury issue, we also reverse the ALJ's determination that the claimant does not have disability from February 24, 2020, and continuing through the date of the CCH as a result of the (date of injury), compensable injury, and we remand the issue of whether the claimant has disability from February 24, 2020, through the date of the CCH as a result of the (date of injury), compensable injury 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 (date of injury), compensable injury extends to an injury to the lumbar spine with the diagnosis of a sprain/strain to the ALJ for further action consistent with this decision.

We reverse the ALJ's determination that the (date of injury), compensable injury does not extend to an injury to the lumbar spine with the following diagnoses: contusion, a disc bulge at L3-4, spondylolisthesis at L4-5, or a disc bulge at L5-S1 with a right L5 pars particular fracture, and we remand the issue of whether the (date of injury), compensable injury extends to an injury to the lumbar spine with the following diagnoses: contusion, a disc bulge at L3-4, spondylolisthesis at L4-5, or a disc bulge at L5-S1 with a right L5 pars particular fracture to the ALJ for further action consistent with this decision.

We reverse the ALJ's determination that the claimant does not have disability from February 24, 2020, and continuing through the date of the CCH as a result of the (date of injury), compensable injury, and we remand the issue of whether the claimant has disability from February 24, 2020, and continuing through the date of the CCH as a result of the (date of injury), compensable injury for further action consistent with this decision.

REMAND INSTRUCTIONS

On remand the ALJ is to correct the misstatement of Dr. U's records. The ALJ shall consider all of the evidence and make a determination whether the compensable injury extends to an injury to the lumbar spine with the following diagnoses: sprain/strain, contusion, a disc bulge at L3-4, spondylolisthesis at L4-5, or a disc bulge at L5-S1 with a right L5 pars particular fracture. The ALJ is then to make a determination whether the claimant has disability from February 24, 2020, and continuing through the date of the CCH as a result of the (date of injury), compensable injury.

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 Appeals Panel Decision 060721, decided June 12, 2006.

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

For service in person the address is:

**STEPHEN S. VOLLBRECHT, EXECUTIVE DIRECTOR
300 W. 15TH STREET, 6TH FLOOR
AUSTIN, TEXAS 78701.**

For service by mail the address is:

**STEPHEN S. VOLLBRECHT, EXECUTIVE DIRECTOR
P.O. BOX 13777
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Carisa Space-Beam
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Margaret L. Turner
Appeals Judge