APPEAL NO. 201713
FILED JANUARY 15, 2021

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 6, 2020, with the record closing on October 5, 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 of (date of injury), does not extend to a disc bulge at T8-9, disc herniation at T11-12, or a disc herniation at T12; (2) the appellant (claimant) reached maximum medical improvement (MMI) on June 26, 2019; and (3) the claimant's impairment rating (IR) is zero percent.

The claimant appealed, disputing the ALJ's determinations regarding extent of injury, MMI and IR. The respondent (carrier) responded, urging affirmance of the ALJ's determinations.

DECISION

Affirmed as reformed.

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).

Section 410.203(b) was amended effective September 1, 2011, to allow the Appeals Panel to affirm the decision of an ALJ as prescribed in Section 410.204(a-1). Section 410.204(a) provides, in part, that the Appeals Panel may issue a written decision on an affirmed case as described in subsection (a-1). Subsection (a-1) provides, in part, that the Appeals Panel may only issue a written decision in a case in which the Appeals Panel affirms the decision of an ALJ if the case: (1) is a case of first impression; (2) involves a recent change in law; or (3) involves errors at the [CCH] that require correction but do not affect the outcome of the hearing. This case is a situation involving errors that require correction but do not affect the outcome of the hearing.

In the Evidence Presented section of the decision and order, the ALJ mistakenly indicated that there were no witnesses for the carrier. However, we note that (Dr. O) did testify on behalf of the carrier.

EXTENT OF INJURY

Issue No. 1, as well as the Benefit Review Conference Report, indicate that the extent-of-injury conditions at issue in this case are a disc bulge at T8-9, a disc herniation at T11-12, and a disc herniation at T12-L1. In Finding of Fact No. 3, the ALJ wrote that the claimed disc bulge at T8-9, disc herniation at T11-12, and disc herniation at T12-L1 were not caused, worsened, enhanced, or accelerated by the compensable injury sustained on (date of injury). This finding is supported by sufficient evidence. However, in the Decision and Order section, Conclusion of Law No. 3, as well as in the Decision section of the decision and order, the ALJ wrote that the compensable injury of (date of injury), does not extend to a disc bulge at T8-9, disc herniation at T11-12, or a disc herniation at T12. The ALJ failed to include the L1 level of the last condition at issue. Therefore, we reform the Decision and Order section, Conclusion of Law No. 3, and the Decision section of the decision and order to state that the compensable injury of (date of injury), does not extend to a disc bulge at T8-9, disc herniation at T11-12, or a disc herniation at T12-L1. We affirm as reformed the ALJ's determination that the compensable injury of (date of injury), does not extend to a disc bulge at T8-9, disc herniation at T11-12, or a disc herniation at T12-L1.

MMI AND IR

Section 401.011(30)(A) provides that MMI is the "earliest date after which, based on reasonable medical probability, further material recovery from or lasting improvement to an injury can no longer reasonably be anticipated." Section 408.1225(c) provides that the report of the designated doctor has presumptive weight, and the Texas Department of Insurance, Division of Workers' Compensation (Division) shall base its determination of whether the employee has reached MMI on the report of the designated doctor unless the preponderance of the other medical evidence is to the contrary.

Section 408.125(c) provides that the report of the designated doctor shall have presumptive weight, and the Division shall base the IR on that report unless the preponderance of the other medical evidence is to the contrary, and that, if the preponderance of the medical evidence contradicts the IR contained in the report of the designated doctor chosen by the Division, the Division shall adopt the IR of one of the other doctors. 28 TEX. ADMIN. CODE § 130.1(c)(3) (Rule 130.1(c)(3)) provides, in part, that the assignment of an IR for the current compensable injury shall be based on the injured employee's condition on the MMI date considering the medical record and the certifying examination.

The ALJ determined that the claimant reached MMI on June 26, 2019, with a zero percent IR, in accordance with the certification of Dr. O, the carrier-selected

required medical examination doctor. The ALJ's determination is supported by sufficient evidence and is affirmed. In the Discussion section of the decision and order, the ALJ stated that (Dr. M), the designated doctor, examined the claimant on October 15, 2019, and issued multiple certifications indicating that the claimant had not reached MMI for both the accepted and disputed conditions. The ALJ additionally stated in the Discussion section of his decision and order that "[b]ased on the evidence presented and given the disposition of the [extent-of-injury] issue, Dr. [M's] certification that [the] [c]laimant has not yet reached MMI is contrary to the preponderance of the other medical evidence." The ALJ then stated in Finding of Fact No. 4 that on October 15, 2019, Dr. M certified that the claimant had not reached MMI. That finding is supported by the evidence. However, in Finding of Fact No. 5, the ALJ wrote, "[t]he preponderance of the other medical evidence is contrary to Dr. [M's] certification that [the] [c]laimant reached MMI on July 26, 2019, with a [five] [percent] IR." As discussed previously, the evidence reflects that Dr. M has only issued certifications that indicate the claimant has not reached MMI. There is no certification in the record from Dr. M, or any other doctor, that certifies the claimant reached MMI on July 26, 2019, with a five percent IR. Therefore, we reform Finding of Fact No. 5 to state that the preponderance of the other medical evidence is contrary to Dr. M's certification that the claimant has not reached MMI.

SUMMARY

We reform the Decision and Order section, Conclusion of Law No. 3, and the Decision section of the decision and order to state that the compensable injury of (date of injury), does not extend to a disc bulge at T8-9, disc herniation at T11-12, or a disc herniation at T12-L1.

We affirm as reformed the ALJ's determination that the compensable injury of (date of injury), does not extend to a disc bulge at T8-9, disc herniation at T11-12, or a disc herniation at T12-L1.

We reform Finding of Fact No. 5 to state that the preponderance of the other medical evidence is contrary to Dr. M's certification that the claimant has not reached MMI.

We affirm the ALJ's determination that the claimant reached MMI on June 26, 2019.

We affirm the ALJ's determination that the claimant's IR is zero percent.

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

CORPORATION SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701.

Cristina Beceiro
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge