

APPEAL NO. 201734
FILED JANUARY 20, 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 October 19, 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), extends to a headache due to trauma, cervical sprain, cervical strain, thoracic sprain, thoracic strain, lumbar strain, lumbar sprain, right knee sprain, and right knee strain; (2) the compensable injury of (date of injury), does not extend to cervical disc herniations at C4-5, C5-6, and C6-7 or to lumbar disc herniations at L3-4, L4-5, and L5-S1; (3) the respondent (claimant) did not have disability from May 23 through May 25, 2020; and (4) the claimant had disability from May 26, 2020, through the date of the CCH. The appellant (carrier) appeals the ALJ's determination that the compensable injury extends to headache due to trauma, cervical sprain, cervical strain, thoracic sprain, thoracic strain, lumbar strain, lumbar sprain, right knee sprain, and right knee strain, as well as the determination that the claimant had disability from May 26, 2020, through the date of the CCH. The appeal file does not contain a response from the claimant.

The ALJ's determinations that the compensable injury does not extend to cervical disc herniations at C4-5, C5-6, and C6-7 or to lumbar disc herniations at L3-4, L4-5, and L5-S1 and that the claimant did not have disability from May 23 through May 25, 2020, were not appealed and have become final pursuant to Section 410.169.

DECISION

Affirmed in part and reversed and rendered by striking.

The parties stipulated that the claimant sustained a compensable injury on (date of injury), and that the carrier accepted as compensable a head contusion, cervical contusion, rib contusion, and right knee contusion. The claimant testified that she was injured when she was hit by a forklift.

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

The ALJ's determination that the compensable injury of (date of injury), extends to a headache due to trauma, cervical sprain, cervical strain, thoracic sprain, thoracic strain, lumbar strain, lumbar sprain, right knee sprain, and right knee strain is supported by sufficient evidence and is affirmed.

DISABILITY

The disability issue reported out of the benefit review conference was as follows: “[d]id the [c]laimant have disability from May 23, 2020, through the present resulting from an injury sustained on (date of injury)?” During the opening argument, the claimant's attorney stated that he meant to request to amend the disability issue to reflect June 25, 2020, through the present as the period of disability in dispute. The ALJ asked the parties if they agreed to amend the disability issue to reflect the period of June 25, 2020, through the present and both parties stated that they agreed to amend the disputed period of disability. The ALJ stated on the record that the disability issue would be amended as agreed to by the parties. However, the ALJ failed to amend the disability issue in the Decision and Order. The carrier appealed the ALJ's determination that the claimant had disability from May 26, 2020, through the date of the CCH.

The ALJ failed to modify the disability issue as agreed to by the parties. Accordingly, we reform the ALJ's decision to reflect that the only period of disability at issue before the ALJ was June 25, 2020, through the date of the CCH. We reverse that portion of the ALJ's determination that the claimant had disability from May 26 through June 24, 2020, as exceeding the scope of the amended issue before her. We strike that portion of the ALJ's determination that the claimant had disability from May 26 through June 24, 2020. That portion of the ALJ's determination that the claimant had disability from June 25, 2020, through the date of the CCH is supported by sufficient evidence and is affirmed.

SUMMARY

We affirm the ALJ's determination that the compensable injury extends to a headache due to trauma, cervical sprain, cervical strain, thoracic sprain, thoracic strain, lumbar strain, lumbar sprain, right knee sprain, and right knee strain.

We affirm that portion of the ALJ's determination that the claimant had disability from June 25, 2020, through the date of the CCH.

We reverse that portion of the ALJ's determination that the claimant had disability from May 26 through June 24, 2020, as exceeding the scope of the amended issue

before her. We strike that portion of the ALJ's determination that the claimant had disability from May 26 through June 24, 2020.

The true corporate name of the insurance carrier is **ARCH 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 78701-3218.**

Margaret L. Turner
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Carisa Space-Beam
Appeals Judge