

APPEAL NO. 201870
FILED JANUARY 26, 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 November 3, 2020, in (city), Texas, with (hearing officer) 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 medial patellofemoral ligament sprain, patellar subluxation, or patellar tracking disorder all in the left knee; (2) the appellant (claimant) reached maximum medical improvement (MMI) on September 12, 2019; (3) the claimant's impairment rating (IR) is zero percent; (4) the claimant had disability resulting from an injury sustained on (date of injury), from June 20, 2019, through September 12, 2019; and (5) the claimant did not have disability resulting from an injury sustained on (date of injury), from September 13, 2019, through June 27, 2020.

The claimant appealed, disputing the ALJ's determinations of extent of injury, MMI, and IR. Additionally, the claimant appealed that portion of the ALJ's determination that she did not have disability. The respondent (carrier) responded, urging affirmance of the disputed determinations.

That portion of the ALJ's determination that the claimant had disability from June 20, 2019, through September 12, 2019, was not appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed in part and reversed and remanded in part.

The parties stipulated, in part, that the carrier has accepted a (date of injury), compensable injury in the form of a left knee sprain. The claimant testified that she was injured when she slipped on a metal grate while receiving bags, causing her left knee to twist and pop.

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 does not extend to medial patellofemoral ligament sprain, patellar subluxation, or patellar tracking disorder all in the left knee is supported by sufficient evidence and is affirmed.

MMI

The ALJ's determination that the claimant reached MMI on September 12, 2019, is supported by sufficient evidence and is affirmed.

IR

The ALJ's determination that the claimant's IR is zero percent is supported by sufficient evidence and is affirmed.

DISABILITY

The disability issue reported out of the benefit review conference was as follows: "Did the claimant have disability resulting from the injury of [(date of injury),] from [June 20, 2019,] through the present?"

The parties agreed at the CCH to amend the disability period at issue because the claimant returned to work on September 28, 2020. The parties agreed to modify the disability period at issue as follows:

Did the claimant have disability resulting from the injury of (date of injury), from June 20, 2019, through September 27, 2020?

As previously noted, that portion of the ALJ's disability determination that the claimant had disability from June 20, 2019, through September 12, 2019, was not appealed and has become final. That portion of the ALJ's determination that the claimant did not have disability from September 13, 2019, through June 27, 2020, is supported by sufficient evidence.

Section 410.168 provides that an ALJ's decision contain findings of fact and conclusions of law, a determination of whether benefits are due, and an award of benefits due. 28 TEX. ADMIN. CODE § 142.16 (Rule 142.16) provides 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. As previously noted, the ending date of the period of disability in dispute at the CCH was September 27, 2020. However, the ALJ failed to make a finding of fact or conclusion of law of whether the claimant had disability from June 28, 2020, through September 27,

2020. Because the ALJ failed to make a determination on the entire disability period as properly before her to determine, the ALJ's decision is reversed as being incomplete. See Appeals Panel Decision (APD) 171088, decided June 21, 2017, and APD 182482, decided December 19, 2018. We remand that portion of the disability issue to the ALJ to determine whether the claimant had disability from June 28, 2020, through September 27, 2020.

SUMMARY

We affirm the ALJ's determination that the compensable injury does not extend to medial patellofemoral ligament sprain, patellar subluxation, or patellar tracking disorder all in the left knee.

We affirm the ALJ's determination that the claimant reached MMI on September 12, 2019.

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

We affirm that portion of the ALJ's determination that the claimant did not have disability from September 13, 2019, through June 27, 2020.

We reverse the ALJ's decision as being incomplete and remand that portion of the disability issue to the ALJ to determine whether the claimant had disability from June 28, 2020, through September 27, 2020.

REMAND INSTRUCTIONS

On remand the ALJ is to make findings of fact, conclusions of law, and a decision regarding whether the claimant had disability from June 28, 2020, through September 27, 2020.

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 **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 78701-3218.**

Margaret L. Turner
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Carisa Space-Beam
Appeals Judge