

APPEAL NO. 210056  
FILED APRIL 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 December 16, 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 left hip femoral neck fracture and left hip dysplasia; (2) the respondent (claimant) reached maximum medical improvement (MMI) on February 18, 2020; (3) the claimant's impairment rating (IR) is 15%; and (4) the claimant had disability from September 18, 2019, through February 18, 2020, resulting from the compensable injury of (date of injury). The appellant (carrier) appeals the ALJ's determinations of the extent of the compensable injury, MMI, IR, and disability. The carrier argues, in part, that the ALJ erred in relying on expert medical causation evidence from the designated doctor when the report was not in evidence. The appeal file does not contain a response from the claimant to the carrier's appeal.

**DECISION**

Reversed and remanded.

The parties stipulated, in part, that: the claimant sustained a compensable injury on (date of injury); the carrier accepted a left hip sprain and a left hip strain as compensable; and (Dr. C) was appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division) as designated doctor to determine MMI, IR, the extent of the claimant's injury, and the claimant's ability to return to work. We note that the ALJ incorrectly noted the carrier's name in stipulation 1.C. A review of the record reflects that the parties stipulated that on (date of injury), the employer provided workers' compensation insurance with (carrier 1). The ALJ mistakenly listed the carrier as (carrier 2). We reform stipulation 1.C. to conform to the actual stipulation of the parties and reflect the correct carrier's name as (carrier 1). The claimant testified that she was injured on (date of injury), when her left leg slipped causing her to land in a split position.

**EXTENT OF INJURY**

Section 408.0041(a) provides, in part, that a carrier or an employee may request and the Division may order a medical examination to resolve questions regarding the extent of the employee's compensable injury. Section 408.0041(e) provides, in part, that the designated doctor shall report to the Division and the report of the designated doctor has presumptive weight unless the preponderance of the evidence is to the contrary. Section 410.163(b) provides, in pertinent part, that an ALJ shall ensure the

preservation of the rights of the parties and the full development of facts required for the determinations to be made.

The parties stipulated that Dr. C was appointed as designated doctor to determine the extent of the claimant's injury. In her discussion of the evidence, the ALJ noted that Dr. C's "opinion on extent of injury was contained in the medical records, but the report from his extent of injury examination was not in evidence." We hold under the facts of this case where a designated doctor has been appointed by the Division for the specific issue of extent of injury it was error for the ALJ to fail to request that the designated doctor's report on extent of injury be admitted into evidence or admit the designated doctor's report on extent of injury as an ALJ's exhibit. Accordingly, we reverse the ALJ's determination that the compensable injury extends to a left hip femoral neck fracture and left hip dysplasia and remand the extent-of-injury issue to the ALJ for further action consistent with this decision.

### **DISABILITY**

The ALJ initially read the disability issue to be heard at the CCH from the Benefit Review Conference Report as follows: Did the claimant have disability from September 18, 2019, through February 18, 2020, resulting from the injury sustained on (date of injury)? The ALJ then noted on the record that the parties had agreed to amend the disability issue in dispute as follows: Did the claimant have disability from May 22, 2019, through February 18, 2020, resulting from an injury sustained on (date of injury)? The parties agreed on the record to amend the disability time period in dispute. However, the ALJ failed to modify the disability period in dispute in the decision. The ALJ found that beginning on September 18, 2019, and continuing through February 18, 2020, the compensable injury sustained on (date of injury), was a cause of the claimant's inability to obtain and retain employment at wages equivalent to her pre-injury wage. However, the ALJ failed to make a finding on the disability period of May 22, 2019, through September 17, 2019, which was a time period at issue for her to decide. Additionally, the extent-of-injury issue is being remanded to the ALJ. Accordingly, we reverse the ALJ's disability determination and remand the disability issue to the ALJ to determine whether the claimant had disability from May 22, 2019, through February 18, 2020, as supported by the evidence.

### **MMI/IR**

Given that the extent-of-injury issue has been reversed and remanded to the ALJ to make a determination consistent with this decision, we reverse the ALJ's determination that the claimant reached MMI on February 18, 2020, and the claimant's IR is 15% and we remand the issues of MMI and IR to the ALJ to make a determination consistent with this decision.

## **SUMMARY**

We reverse the ALJ's determination that the compensable injury of (date of injury), extends to a left hip femoral neck fracture and left hip dysplasia and remand the extent-of-injury issue to the ALJ for further action consistent with this decision.

We reverse the ALJ's determination that the claimant had disability from September 18, 2019, through February 18, 2020, resulting from the compensable injury sustained on (date of injury), and remand the disability issue to the ALJ to determine whether the claimant had disability from May 22, 2019, through February 18, 2020.

We reverse the ALJ's determination that the claimant reached MMI on February 18, 2020, and remand the MMI issue to the ALJ for further action consistent with this decision.

We reverse the ALJ's determination that the claimant's IR is 15% and remand the IR issue to the ALJ for further action consistent with this decision.

## **REMAND INSTRUCTIONS**

On remand the ALJ is to admit into evidence the report from Dr. C regarding his opinion on extent of injury, an issue he was appointed by the Division to address. The parties are to be provided with the extent-of-injury report from Dr. C and allowed an opportunity to respond. The ALJ is to then make a determination of whether the compensable injury of (date of injury), extends to a left hip femoral neck fracture and left hip dysplasia that is supported by the evidence.

The ALJ is then to make a determination of whether the claimant had disability from May 22, 2019, through February 18, 2020, that is supported by the evidence.

The ALJ is to then make a determination of the claimant's MMI and IR for the compensable injury of (date of injury), that is supported by the evidence.

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 Division, 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 **SAFETY NATIONAL CASUALTY CORPORATION** 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.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Cristina Beceiro  
Appeals Judge

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Carisa Space-Beam  
Appeals Judge