

APPEAL NO. 210186  
FILED MARCH 31, 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 September 28, 2020, and December 7, 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 abdominal wall contusion, right knee grade I-II anterior cruciate ligament (ACL) strain, right hand sprain, right wrist sprain, left hand sprain, left wrist sprain, and right knee grade 2 ACL sprain; (2) the compensable injury of (date of injury), does not extend to headaches, left knee sprain/strain, chondromalacia in patella of right knee, stage II chondromalacia in remainder of right knee, right knee meniscal tear of the posterior horn, right knee ACL tear apart from right knee ACL sprain/strain, right knee joint effusion, right hand/wrist tenosynovitis, right metacarpal phalangeal (MCP) joint effusion, bone edema within distal phalanges of 4th and 5th digits of the right hand, bone edema within the distal phalanges of the 2nd and 5th digits of the left hand, or left hand flexor tenosynovitis; (3) the employer did not tender a bona fide offer of employment (BFOE) to the appellant (claimant); (4) the claimant had disability as a result of the compensable injury sustained on (date of injury), from July 22, 2019, through November 12, 2019, but not otherwise through the date of the hearing on December 7, 2020; and (5) the claimant's average weekly wage (AWW) is \$502.56.

The claimant appealed, disputing the ALJ's determinations regarding extent of injury and disability. The respondent (carrier) responded, urging affirmance of the ALJ's determinations. The ALJ's determinations that the employer did not tender a BFOE to the claimant and the claimant's (AWW) is \$502.56 were not appealed and have become final pursuant to Section 410.169.

DECISION

Affirmed, in part, and reversed and remanded, in part.

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).

The parties stipulated that the claimant sustained a compensable injury on (date of injury), and that the compensable injury extends to bilateral knee contusions, right knee sprain/strain, bilateral hand contusions, left hand grade 1 sprain of the ulnar collateral ligament at the 5th MCP joint, and right knee grade 2 ACL sprain, and that (Dr. A) was appointed as designated doctor by the Texas Department of Insurance, Division of Workers' Compensation (Division) to determine extent of injury, maximum medical improvement, impairment rating, and disability. The claimant, a production worker, was injured on (date of injury), when she slipped and fell forward onto her hands, knees, and abdomen.

### **EXTENT OF INJURY**

That portion of the ALJ's extent-of-injury determination that the compensable injury of (date of injury), extends to abdominal wall contusion, right knee grade I-II ACL strain, right hand sprain, right wrist sprain, left hand sprain, left wrist sprain, and right knee grade 2 ACL sprain, but does not extend to headaches, left knee sprain/strain, chondromalacia in patella of right knee, stage II chondromalacia in remainder of right knee, right knee ACL tear apart from right knee ACL sprain/strain, right knee joint effusion, right hand/wrist tenosynovitis, right MCP joint effusion, bone edema within distal phalanges of 4th and 5th digits of the right hand, bone edema within the distal phalanges of the 2nd and 5th digits of the left hand, or left hand flexor tenosynovitis is supported by sufficient evidence and is affirmed.

The extent-of-injury issue contained in the Benefit Review Conference Report lists the following condition at issue: right knee meniscal tear of the posterior horn. At the CCH dated September 28, 2020, the ALJ suggested amending that condition to read, "right knee *lateral* meniscal tear of the posterior horn." Both parties agreed to the suggested amendment. In the CCH dated December 7, 2020, the ALJ again read the condition at issue on the record as amended.

In the ALJ's decision and order, the ALJ failed to note the condition as amended in the extent-of-injury issue. Additionally, in Finding of Fact No. 4, Conclusion of Law No. 4, the Decision section, and the Decision and Order section, the ALJ notes the condition as "right knee meniscal tear of the posterior horn" instead of "right knee lateral meniscal tear of the posterior horn" as amended by the parties. As the ALJ failed to make a determination regarding the condition as amended, the ALJ's determination is incomplete. We therefore reverse the ALJ's determination that the compensable injury of (date of injury), does not extend to a right knee meniscal tear of the posterior horn, and remand the issue of whether the compensable of (date of injury), extends to a right knee lateral meniscal tear of the posterior horn to the ALJ for further action consistent with this decision.

## **DISABILITY**

Because we have reversed and remanded a portion of the extent-of-injury determination, we also reverse the ALJ's determination that the claimant had disability as a result of the compensable injury sustained on (date of injury), from July 22, 2019, through November 12, 2019, but not otherwise through the date of the hearing on December 7, 2020, and remand the disability issue to the ALJ for further action consistent with this decision.

## **SUMMARY**

We affirm that portion of the ALJ's extent-of-injury determination that the compensable injury of (date of injury), extends to abdominal wall contusion, right knee grade I-II ACL strain, right hand sprain, right wrist sprain, left hand sprain, left wrist sprain, and right knee grade 2 ACL sprain, but does not extend to headaches, left knee sprain/strain, chondromalacia in patella of right knee, stage II chondromalacia in remainder of right knee, right knee ACL tear apart from right knee ACL sprain/strain, right knee joint effusion, right hand/wrist tenosynovitis, right MCP joint effusion, bone edema within distal phalanges of 4th and 5th digits of the right hand, bone edema within the distal phalanges of the 2nd and 5th digits of the left hand, or left hand flexor tenosynovitis.

We reverse that portion of the ALJ's extent-of-injury determination that the compensable injury of (date of injury), does not extend to a right knee meniscal tear of the posterior horn, and we remand the issue of whether the compensable injury of (date of injury), extends to a right knee lateral meniscal tear of the posterior horn for further action consistent with this decision.

We reverse the ALJ's determination that the claimant had disability as a result of the compensable injury sustained on (date of injury), from July 22, 2019, through November 12, 2019, but not otherwise through the date of the hearing on December 7, 2020, and remand the disability issue to the ALJ for further action consistent with this decision.

## **REMAND INSTRUCTIONS**

On remand, the ALJ is to amend the extent-of-injury condition as agreed to by the parties and make a determination regarding whether the compensable injury of (date of injury), extends to a right knee lateral meniscal tear of the posterior horn. The ALJ is then to make a determination regarding whether the claimant had disability from July 22, 2019, through the CCH on December 7, 2020, as a result of the compensable injury of (date of 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 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 **ZURICH AMERICAN 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.**

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Cristina Beceiro  
Appeals Judge

CONCUR:

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Carisa Space-Beam  
Appeals Judge

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Margaret L. Turner  
Appeals Judge