

APPEAL NO. 210314
FILED APRIL 29, 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 January 19, 2021, 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 aggravation of pre-existing bilateral L5 spondylolysis, lumbar radiculopathy, and bilateral leg pain; (2) the compensable injury of (date of injury), does not extend to a 14 mm hemangioma at T1-2, 2.1 mm disc bulge at L3-4, aggravation of a pre-existing 2.11 mm disc bulge at L3-4, 4.5 mm disc bulge at L4-5, aggravation of a pre-existing 4.5 mm disc bulge at L4-5, 3 mm disc bulge at L5-S1, aggravation of a pre-existing 3 mm disc bulge at L5-S1, 2.9 mm disc bulge at T1-2, aggravation of a pre-existing 2.9 mm disc bulge at T1-2, aggravation of pre-existing degenerative disc disease, and aggravation of pre-existing lumbar radiculopathy; (3) the respondent (claimant) has not reached maximum medical improvement (MMI); and (4) because the claimant has not reached MMI, he cannot be assessed an impairment rating (IR) at this time.

The appellant (carrier) appealed, disputing the ALJ's determinations of extent of injury that were not favorable to them, MMI, and IR. The claimant responded, urging affirmance of the disputed extent of injury, MMI, and IR determinations. The ALJ's determination that the compensable injury does not extend to a 14 mm hemangioma at T1-2, 2.1 mm disc bulge at L3-4, aggravation of a pre-existing 2.11 mm disc bulge at L3-4, 4.5 mm disc bulge at L4-5, aggravation of a pre-existing 4.5 mm disc bulge at L4-5, 3 mm disc bulge at L5-S1, aggravation of a pre-existing 3 mm disc bulge at L5-S1, 2.9 mm disc bulge at T1-2, aggravation of a pre-existing 2.9 mm disc bulge at T1-2, aggravation of pre-existing degenerative disc disease, and aggravation of pre-existing lumbar radiculopathy was not appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed as reformed.

The parties stipulated, in part, that the accepted compensable injury is lumbar strain and thoracic sprain. The claimant, a welder, testified that he was injured on (date of injury), when a pipe he was welding started to roll off the table, and he had to push it back.

The Benefit Review Conference (BRC) Report listed the disputed extent-of-injury issue as follows: Does the compensable injury of (date of injury), extend to a 14 mm

hemangioma at T1-2, 2.1 mm disc bulge at L3-4, aggravation of a pre-existing 2.11 mm disc bulge at L3-4, 4.5 mm disc bulge at L4-5, aggravation of a pre-existing 4.5 mm disc bulge at L4-5, 3 mm disc bulge at L5-S1, aggravation of a pre-existing 3 mm disc bulge at L5-S1, 2.9 mm disc bulge at T1-2, aggravation of a pre-existing 2.9 mm disc bulge at T1-2, aggravation of pre-existing degenerative disc disease, bilateral L5 spondylolysis, aggravation of pre-existing bilateral L5 spondylolysis, lumbar radiculopathy, aggravation of pre-existing lumbar radiculopathy, and bilateral leg pain? The parties agreed at the CCH on the record that the disputed extent-of-injury issue was as listed in the BRC report.

Although the extent-of-injury issue was correctly noted in the decision and order, the ALJ failed to make a finding of fact, conclusion of law, or decision regarding the condition of bilateral L5 spondylolysis. However, as stated above, the ALJ did determine that the condition of an aggravation of pre-existing bilateral L5 spondylolysis is part of the compensable injury. In Appeals Panel Decision 100718, decided August 9, 2010, the Appeals Panel stated that “a determination that the compensable injury extends to an aggravation of a pre-existing condition ... is a determination that the compensable injury extends to the underlying pre-existing condition ... as a matter of law.” Therefore, we reform Finding of Fact No. 3, Conclusion of Law No. 3, the Decision section, and the Decision and Order section to include the condition of bilateral L5 spondylolysis as part of the compensable injury.

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 ALJ's determination that the compensable injury of (date of injury), extends to bilateral L5 spondylolysis, aggravation of pre-existing bilateral L5 spondylolysis, lumbar radiculopathy, and bilateral leg pain is supported by sufficient evidence and is affirmed as reformed.

The ALJ's determination that the claimant has not reached MMI is supported by sufficient evidence and is affirmed.

The ALJ's determination that because the claimant has not reached MMI, he cannot be assessed an IR at this time is supported by sufficient evidence and is affirmed.

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

**RICHARD J. GERGASKO, PRESIDENT
2200 ALDRICH ST.
AUSTIN, TEXAS 78723.**

Cristina Beceiro
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge