

APPEAL NO. 210332
FILED MAY 3, 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 8, 2020, with the record closing on December 28, 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), does not extend to left claw hand deformity and left upper extremity complex regional pain syndrome (CRPS); (2) the respondent (carrier) did not waive the right to contest the extent of the (date of injury), compensable injury certified by the designated doctor on August 2, 2019, by not timely contesting the impairment rating (IR) of 26% for the designated doctor determined compensable injury pursuant to 28 TEX. ADMIN. CODE § 130.102(h) (Rule 130.102(h)); (3) the IR of 26% for the designated doctor determined compensable injury assigned by (Dr. S) on August 2, 2019, did not become final under Rule 130.102(h); (4) the appellant (claimant) reached maximum medical improvement (MMI) on November 27, 2017; (5) the claimant's IR is 4%; (6) the claimant is not entitled to supplemental impairment benefits (SIBs) for the first quarter, June 27, 2020, through September 25, 2020; and (7) the claimant is not entitled to SIBs for the second quarter, September 26, 2020, through December 25, 2020. The claimant appealed, disputing the ALJ's determinations. The carrier responded, urging affirmance of the ALJ's determinations.

DECISION

Reversed and remanded.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury), that extends to a displaced fracture of the base of the 5th metacarpal bone of the left hand; Dr. S was appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division) as the designated doctor to determine extent of injury, MMI, and IR; the qualifying period for the first quarter of SIBs is from March 15, 2020, through June 13, 2020; and the qualifying period for the second quarter of SIBs for this case is from June 14, 2020, through September 12, 2020. The claimant, a mobile phlebotomist, testified she was injured on (date of injury), when her right knee buckled and she fell on her left hand. We note that the ALJ's decision indicates there were no witnesses testifying on behalf of the claimant, when in fact, the claimant testified on her own behalf.

MMI/IR, FINALITY, AND WAIVER UNDER RULE 130.102(h)

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. 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.

In the ALJ's decision, the ALJ indicated in Conclusion of Law No. 5 and in the Decision section that the IR of 26% assigned by Dr. S did not become final under Rule 130.102(h). However, the ALJ did not make a specific finding of fact regarding the issue of finality as was certified in this case and as required by Section 410.168 and Rule 142.16. See Appeals Panel Decision (APD) 132339, decided December 12, 2013; APD 150510, decided April 21, 2015; APD 162262, decided January 10, 2017; APD 181349, decided August 15, 2018.

We note that Finding of Fact No. 5 states, "[the] [carrier] contested the finding on extent of injury by filing a request for a benefit review conference prior to September 25, 2020." However, this finding does not indicate that the 26% IR certification by Dr. S was disputed on that date or any other date. Accordingly, we reverse the ALJ's determination that the IR of 26% for the designated doctor determined compensable injury assigned by Dr. S on August 2, 2019, did not become final under Rule 130.102(h) as being incomplete, and we remand the issue of whether the IR of 26% for the designated doctor determined compensable injury assigned by Dr. S on August 2, 2019, became final under Rule 130.102(h) back to the ALJ for further action consistent with this decision.

The ALJ also stated in Conclusion of Law No. 4 and in the Decision section that the carrier did not waive the right to contest the extent of the (date of injury), compensable injury certified by the designated doctor on August 2, 2019, by not timely contesting the IR of 26% for the designated doctor determined compensable injury pursuant to Rule 130.102(h). However, again the ALJ failed to make a specific finding of fact regarding the waiver issue as required. Therefore, we reverse the ALJ's determination that the carrier did not waive the right to contest the extent of the (date of injury), compensable injury certified by the designated doctor on August 2, 2019, by not timely contesting the IR of 26% for the designated doctor determined compensable injury pursuant to Rule 130.102(h) as being incomplete, and we remand the waiver issue back to the ALJ for further action consistent with this decision.

In Conclusions of Law Nos. 6 and 7 and in the Decision section, the ALJ states that the claimant reached MMI on November 27, 2017, with an IR of 4%. However, the ALJ failed to make specific findings of fact regarding the MMI and IR issues as required. We reverse the ALJ's determinations that the claimant reached MMI on November 27,

2017, with an IR of 4% as being incomplete, and we remand the issues of MMI and IR back to the ALJ for further action consistent with this decision.

EXTENT OF INJURY

The extent-of-injury conditions at issue in the present case are rated in Dr. S' 26% IR which is considered in the waiver and finality issues above. Since we have reversed the ALJ's determination that the carrier did not waive the right to contest the extent of the (date of injury), compensable injury certified by the designated doctor on August 2, 2019, by not timely contesting the IR of 26% for the designated doctor determined compensable injury pursuant to Rule 130.102(h) as being incomplete, we also reverse the ALJ's determination that the compensable injury of (date of injury), does not extend to left claw hand deformity and left upper extremity CRPS. We remand the issue of whether the compensable injury of (date of injury), extends to left claw hand deformity and left upper extremity CRPS to the ALJ for further action consistent with this decision.

SIBS

The ALJ determined that the claimant is not entitled to SIBs for the first or second quarter because he determined that the claimant's IR is 4% and does not meet the required 15% IR threshold to be eligible for SIBs. Since we have reversed the ALJ's determinations that claimant reached MMI on November 27, 2017, with an IR of 4% as being incomplete, we also reverse the ALJ's determinations that the claimant is not entitled to SIBs for the first quarter, June 27, 2020, through September 25, 2020, and that that the claimant is not entitled to SIBs for the second quarter, September 26, 2020, through December 25, 2020. We remand the issues of whether the claimant is entitled to SIBs for the first quarter, June 27, 2020, through September 25, 2020, and whether the claimant is entitled to SIBs for the second quarter, September 26, 2020, through December 25, 2020, to the ALJ for further action consistent with this decision.

SUMMARY

We reverse the ALJ's determination that the IR of 26% for the designated doctor determined compensable injury assigned by Dr. S on August 2, 2019, did not become final under Rule 130.102(h) as being incomplete, and we remand the issue of whether the IR of 26% for the designated doctor determined compensable injury assigned by Dr. S on August 2, 2019, became final under Rule 130.102(h) back to the ALJ for further action consistent with this decision.

We reverse the ALJ's determination that the carrier did not waive the right to contest the extent of the (date of injury), compensable injury certified by the designated

doctor on August 2, 2019, by not timely contesting the IR of 26% for the designated doctor determined compensable injury pursuant to Rule 130.102(h) as being incomplete, and we remand the waiver issue back to the ALJ for further action consistent with this decision.

We reverse the ALJ's determinations that the claimant reached MMI on November 27, 2017, with an IR of 4% as being incomplete, and we remand the issues of MMI and IR back to the ALJ for further action consistent with this decision.

We reverse the ALJ's determination that the compensable injury of (date of injury), does not extend to left claw hand deformity and left upper extremity CRPS, and we remand the issue of whether the compensable injury of (date of injury), extends to left claw hand deformity and left upper extremity CRPS to the ALJ for further action consistent with this decision.

We reverse the ALJ's determination that the claimant is not entitled to SIBs for the first quarter, June 27, 2020, through September 25, 2020, and we remand the issue of whether the claimant is entitled to SIBs for the first quarter, June 27, 2020, through September 25, 2020, to the ALJ for further action consistent with this decision.

We reverse the ALJ's determination that the claimant is not entitled to SIBs for the second quarter, September 26, 2020, through December 25, 2020, and we remand the issue of whether the claimant is entitled to SIBs for the second quarter, September 26, 2020, through December 25, 2020, to the ALJ for further action consistent with this decision.

REMAND INSTRUCTIONS

On remand the ALJ is to make findings of fact, conclusions of law, and a decision as to whether the IR of 26% for the designated doctor determined compensable injury assigned by Dr. S on August 2, 2019, became final under Rule 130.102(h). Then, the ALJ is to make findings of fact, conclusions of law, and a decision as to whether the carrier waived the right to contest the extent of the (date of injury), compensable injury certified by the designated doctor on August 2, 2019, by not timely contesting the IR of 26% for the designated doctor determined compensable injury pursuant to Rule 130.102(h). The ALJ is to then make findings of fact, conclusions of law, and decisions as to whether the claimant has reached MMI, and if so, what is the IR. The ALJ is then to make findings of fact, conclusions of law, and a decision as to whether the compensable injury of (date of injury), extends to left claw hand deformity and left upper extremity CRPS. Finally, the ALJ is to make findings of fact, conclusions of law, and decisions as to whether the claimant is entitled to SIBs for the first and second quarters.

Additionally, the ALJ is to correct the Evidence Presented section to indicate that the claimant testified on her own behalf.

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 APD 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA** 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.**

Cristina Beceiro
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge