

APPEAL NO. 210402
FILED MAY 5, 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 was held on February 2, 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), does not extend to lumbar spine disc bulges at L2-3, L3-4, L4-5, and L5-S1; (2) the appellant (claimant) reached maximum medical improvement (MMI) on July 13, 2020; and (3) the claimant's impairment rating (IR) is zero percent. The claimant appealed, disputing the ALJ's determinations. The respondent (self-insured) 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), and that the accepted compensable injury is a lumbar spine sprain/strain. The parties also stipulated that (Dr. M) is the designated doctor appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division) to address MMI, IR, and the extent of the claimant's compensable injury. We note that the stipulation in Finding of Fact No. 1.E. states Dr. M was appointed to address only MMI and IR. The claimant testified she was injured on (date of injury), when she attempted to pick up a 75-pound furniture box she had dropped on the floor.

EXTENT OF INJURY

The ALJ determined that the compensable injury does not extend to lumbar spine disc bulges at L2-3, L3-4, L4-5, and L5-S1. The ALJ discussed medical records in evidence from (Dr. B), the claimant's initial treating doctor; (Dr. S), a subsequent doctor; (Dr. G), a referral neurosurgeon; (Dr. V), a referral doctor; (Dr. Sr), a peer review doctor; and Dr. M, the designated doctor. The ALJ stated that "not a single doctor addressed the conditions that were certified as the disputed conditions at the [Benefit Review Conference]" and that "[n]one of the doctors addressed lumbar spine disc bulges at [L2-3, L3-4, L4-5, and L5-S1]."

In evidence is a letter dated September 29, 2020, from Dr. G. In this letter Dr. G states the following:

My office has been asked to clarify what the specific work-related diagnosis is for [the claimant] and then to provide a cause and effect

analysis to explain how I reached my medical opinion. [The claimant] had an event while doing her normal activities at work that caused the development of the symptomatic [L2] [through] L5-S1 disc bulges with lumbar stenosis.

Dr. G refers to an MRI dated June 29, 2020, revealing disc bulges at L1-2, L2-3, L3-4, L4-5, and L5-S1. Dr. G goes on to discuss the discs in the lumbar spine and states when an extreme force or movements involving lifting items of weight occur, the back can be injured. Dr. G also notes that when the connective tissues are not strong and elastic enough to absorb force exerted on the back the disc can be injured, which he indicates he believed to have occurred in the claimant's case.

The ALJ specifically discusses Dr. G's September 29, 2020, letter in the discussion portion of the decision and order; however, the ALJ stated that Dr. G "did not address the disc bulges at [L2-3, L3-4, L4-5, and L5-S1]." Dr. G did in fact address the disc bulges at L2-3, L3-4, L4-5, and L5-S1. In Appeals Panel Decision (APD) 130723, decided May 6, 2013, and APD 142523, decided January 26, 2015, the Appeals Panel reversed the ALJ's extent-of-injury determinations because the ALJ had misread the causation letter in evidence. Although the ALJ in this case could accept or reject in whole or in part the opinion of Dr. G, or any other evidence, the ALJ misread Dr. G's extent-of-injury opinion regarding disc bulges at L2-3, L3-4, L4-5, and L5-S1. Accordingly, we reverse the ALJ's determination that the compensable injury of (date of injury), does not extend to lumbar spine disc bulges at L2-3, L3-4, L4-5, and L5-S1, and we remand the issue of whether the compensable injury of (date of injury), extends to lumbar spine disc bulges at L2-3, L3-4, L4-5, and L5-S1 for further action consistent with this decision.

MMI/IR

Section 401.011(30)(A) defines MMI as "the earliest date after which, based on reasonable medical probability, further material recovery from or lasting improvement to an injury can no longer reasonably be anticipated." Section 408.1225(c) provides that the report of the designated doctor has presumptive weight, and the Division shall base its determination of whether the employee has reached MMI on the report of the designated doctor unless the preponderance of the other medical evidence is to the contrary.

Section 408.125(c) provides that the report of the designated doctor shall have presumptive weight, and the Division shall base the IR on that report unless the preponderance of the other medical evidence is to the contrary, and that, if the preponderance of the medical evidence contradicts the IR contained in the report of the designated doctor chosen by the Division, the Division shall adopt the IR of one of the

other doctors. 28 TEX. ADMIN.CODE § 130.1(c)(3) (Rule 130.1(c)(3)) provides that the assignment of an IR for the current compensable injury shall be based on the injured employee's condition as of the MMI date considering the medical record and the certifying examination.

Because we have reversed and remanded the extent-of-injury determination to the ALJ, we also reverse the ALJ's determinations that the claimant reached MMI on July 13, 2020, and that the claimant's IR is zero percent, and we remand the issues of MMI and IR to the ALJ for further action consistent with this decision.

We note that the findings of fact, conclusions of law, and decision contain conflicting IRs. In Finding of Fact No. 4 the ALJ found that Dr. M's certification that the claimant reached MMI on July 13, 2020, with a five percent IR is not contrary to the preponderance of the other medical evidence. However, Conclusion of Law No. 5 states the claimant's IR is zero percent, as does the decision paragraph and the decision and order paragraph on the first page. In evidence are alternate certifications from Dr. M dated October 20, 2020. In both of these certifications Dr. M certified the claimant reached MMI on July 13, 2020, with a five percent IR. There is no certification from Dr. M in evidence in which he assigned a zero percent IR.

SUMMARY

We reverse the ALJ's determination that the compensable injury does not extend to lumbar spine disc bulges at L2-3, L3-4, L4-5, and L5-S1, and we remand this issue to the ALJ for further action consistent with this decision.

We reverse the ALJ's determination that the claimant reached MMI on July 13, 2020, and we remand the issue of MMI to the ALJ for further action consistent with this decision.

We reverse the ALJ's determination that the claimant's IR is zero percent, and we remand the issue of IR to the ALJ for further action consistent with this decision.

REMAND INSTRUCTIONS

Dr. M is the designated doctor in this case. The ALJ is to determine whether Dr. M is still qualified and available to be the designated doctor. If Dr. M is no longer qualified or available to serve as the designated doctor and if necessary, another designated doctor is to be appointed to determine MMI and IR.

On remand the ALJ is to correct his misstatement of the evidence regarding Dr. G's September 29, 2020, letter. The ALJ is to determine whether the compensable injury of (date of injury), extends to lumbar spine disc bulges at L2-3, L3-4, L4-5, and

L5-S1 considering the evidence. The ALJ is then to determine the claimant's date of MMI and IR.

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 **FEDEX GROUND PACKAGE SYSTEM, INC. (a certified self-insured)** 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.**

Carisa Space-Beam
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Margaret L. Turner
Appeals Judge