

APPEAL NO. 210449  
FILED MAY 24, 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 September 10, 2020, with the record closing on January 14, 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 a lumbar sprain, lumbar strain, left ankle sprain, left ankle strain, or lumbar degenerative conditions; (2) the appellant (claimant) reached maximum medical improvement (MMI) on November 26, 2019; and (3) the claimant's impairment rating (IR) is two percent. The claimant appealed, disputing the ALJ's determinations. The respondent (carrier) responded, urging affirmance of the ALJ's determinations. The carrier also contends in its response that the claimant did not timely file his appeal.

DECISION

Reversed and remanded.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury), that extends to a left knee lateral meniscus tear and left tibia fracture, and on that same date the claimant was the employee of (employer). The claimant testified that he worked as a supervisor for the employer, a glass company, and that he was injured on (date of injury), while removing glass pieces at a building. The claimant testified that he was carrying eight pieces of glass each weighing approximately 100 to 140 pounds and were approximately 24 to 36 inches wide and 80 to 90 inches long. The claimant further testified that he could not hold the weight of the glass so it fell on top of him, and that he was taken to the hospital via ambulance.

**TIMELINESS OF CLAIMANT'S APPEAL**

The carrier argues in its response that the claimant's appeal was not timely filed with the Texas Department of Insurance, Division of Workers' Compensation (Division).

Section 410.202(a) provides that to appeal the decision of an ALJ, a party shall file a written request for appeal with the Appeals Panel not later than the 15th day after the date on which the decision of the ALJ is received from the Division and shall on the same date serve a copy of the request for appeal on the other party. Section 410.202(d) provides that Saturdays and Sundays and holidays listed in Texas Government Code Section 662.003 are not included in the computation of the time in which to file an appeal or a response. 28 TEX. ADMIN. CODE § 143.3(d) (Rule

143.3(d)), effective December 13, 2009, provides that a request for review shall be presumed to be timely filed if it is: (1) mailed on or before the 15th day after the date of deemed receipt of the ALJ's decision; and (2) received by the Division not later than the 20th day after the date of deemed receipt of the ALJ's decision. The Appeals Panel has held that both portions of Rule 143.3(d) must be complied with for an appeal to be timely. Appeals Panel Decision (APD) 042688, decided December 1, 2004.

Records of the Division reflect that the ALJ's decision was mailed to the claimant at his correct address on January 21, 2021. Pursuant to Rule 102.5(d), unless the great weight of evidence indicates otherwise, the claimant was deemed to have received the ALJ's decision 5 days later. The 5th day after January 21, 2021, was Tuesday, January 26, 2021.

The Governor of the State of Texas issued a disaster proclamation on February 12, 2021, in all 254 counties due to severe winter weather. On February 23, 2021, the Commissioner of Workers' Compensation issued Commissioner's Bulletin # B-0008-21, which provides in pertinent part:

The [Division] is tolling the following Texas workers' compensation deadlines, effective February 12, 2021, through February 23, 2021:

- Medical and income benefit dispute deadlines.

Commissioner's Bulletin # B-0008-21 was in effect in this case. Pursuant to Commissioner's Bulletin # B-0008-21, the appeal deadlines in this case were tolled effective February 12, 2021, through February 23, 2021. Therefore, with the deemed date of receipt of the ALJ's decision on January 26, 2021, the claimant's appeal had to be filed or mailed no later than Friday, February 26, 2021.

The claimant sent copies of his request for review with the Division via facsimile transmission (fax) on March 19, 2021, and March 25, 2021. The fax sent to and received by the Division on March 19, 2021, contains seven pages, and includes the claimant's appeal, which is dated February 10, 2021, as well as two fax confirmation sheets. The first shows that a fax containing five pages was sent on February 10, 2021, to a number unrelated to the Division. However, the second confirms that a fax containing five pages was sent to and was received by the Division on February 22, 2021, after 5:00 p.m., so it was received by the Division on the next working day, February 23, 2021. See Rules 102.3(c) and (d). Accordingly, the claimant's appeal is timely, and the Appeals Panel has jurisdiction to consider it.

## **EXTENT OF INJURY**

The ALJ determined that the compensable injury does not extend to the disputed conditions. The ALJ stated in the discussion portion of the decision the following:

According to [the] [c]laimant's testimony, [the] [c]laimant sustained a compensable injury on (date of injury). [The] [c]laimant was employed as a driver of a trash collection truck. On (date of injury), as [the] [c]laimant was preparing to start his route, he went to the room where the bottled water was stored to put some in his truck. [The] [c]laimant stated that he slipped in some water on the floor and tried to break his fall by reaching out with his right hand. [The] [c]laimant stated in his testimony that when he slipped, both feet flew into the air. [The] [c]laimant went ahead and began his driving route, but the pain in his right knee and right wrist was too severe to finish the route.

However, the claimant did not testify that he was a driver of a trash collection truck, or that he sustained a compensable injury by slipping on water on the floor. As previously discussed, the claimant testified he worked as a supervisor for a glass company, and that he was injured on (date of injury), while removing glass pieces at a building. The ALJ has misstated the claimant's testimony in this case regarding the manner in which the compensable injury is alleged to have occurred. We view the ALJ's misstatement of the evidence as a material misstatement of fact. While the ALJ can accept or reject in whole or in part the evidence regarding the claimed injury, his decision in this case is based upon an incorrect mechanism of injury and requires that we reverse his determination on the extent of the claimant's compensable injury. See APD 172522, decided December 6, 2017. We reverse the ALJ's determination that the compensable injury of (date of injury), does not extend to a lumbar sprain, lumbar strain, left ankle sprain, left ankle strain, or lumbar degenerative conditions, and we remand the issue of whether the compensable injury of (date of injury), extends to a lumbar sprain, lumbar strain, left ankle sprain, left ankle strain, and lumbar degenerative conditions to the ALJ for further action consistent with this decision.

### **MMI/IR**

Because we have reversed and remanded the issue of whether the compensable injury of (date of injury), extends to a lumbar sprain, lumbar strain, left ankle sprain, left ankle strain, and lumbar degenerative conditions, we also reverse the ALJ's determinations that the claimant reached MMI on November 26, 2019, and that the claimant's IR is two percent, and we remand the issues of MMI and IR to the ALJ for further action consistent with this decision.

### **SUMMARY**

We reverse the ALJ's determination that the compensable injury of (date of injury), does not extend to a lumbar sprain, lumbar strain, left ankle sprain, left ankle strain, or lumbar degenerative conditions, and we remand the issue of whether the compensable injury of (date of injury), extends to a lumbar sprain, lumbar strain, left ankle sprain, left ankle strain, and lumbar degenerative conditions to the ALJ for further action consistent with this decision.

We reverse the ALJ's determination that the claimant reached MMI on November 26, 2019, 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 two percent, and we remand the issue of the claimant's IR to the ALJ for further action consistent with this decision.

### **REMAND INSTRUCTIONS**

On remand the ALJ is to correct his misstatement of the evidence regarding the mechanism of the compensable injury. The ALJ shall consider all of the evidence and make findings of fact, conclusions of law, and a determination of whether the compensable injury of (date of injury), extends to a lumbar sprain, lumbar strain, left ankle sprain, left ankle strain, and lumbar degenerative conditions. The ALJ is to make findings of fact, conclusions of law, and a determination on the claimant's date of MMI and IR 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 APD 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **TRUMBULL INSURANCE COMPANY** 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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Carisa Space-Beam  
Appeals Judge

CONCUR:

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Cristina Beceiro  
Appeals Judge

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Margaret L. Turner  
Appeals Judge