

APPEAL NO. 210450  
FILED MAY 14, 2021

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A bifurcated contested case hearing (CCH) was held. On December 7, 2020, (administrative law judge), the administrative law judge (ALJ), held a hearing in (city), Texas, to resolve the disputed extent-of-injury issue. An interlocutory order was issued regarding the extent-of-injury issue and on February 23, 2021, the ALJ held a CCH to resolve the issues of maximum medical improvement (MMI) and impairment rating (IR). The ALJ resolved the disputed issues by deciding that: (1) the compensable injury sustained on (date of injury), extends to cervical sprain, cervical strain, left shoulder rotator cuff strain, and left shoulder impingement syndrome; (2) the compensable injury of (date of injury), does not extend to disc herniations at C4-5 and C6-7, disc bulges at L1-2, L2-3, L3-4, L4-5, and L5-S1, lumbar radiculopathy, or aggravation of lumbar spinal stenosis with neurogenic claudication at L3-4, L4-5, and L5-S1; (3) the appellant (claimant) reached MMI on January 8, 2020; and (4) the claimant's IR is zero percent. The claimant appealed, disputing the ALJ's determinations of extent of injury that were not favorable to her, MMI, and IR. The respondent (carrier) responded, urging affirmance of the disputed extent-of-injury conditions, MMI, and IR determinations. The ALJ's determination that the compensable injury extends to cervical sprain, cervical strain, left shoulder rotator cuff strain, and left shoulder impingement syndrome was not appealed and has become final pursuant to Section 410.169.

DECISION

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

The parties stipulated, in part, that: (1) the claimant sustained a compensable injury on (date of injury); (2) the compensable injury of (date of injury), extends to concussion, a left shoulder strain, a left arm strain, a left leg strain, a left hand strain, and a lumbar strain but does not extend to a lumbar sprain or a left shoulder sprain; and (3) (Dr. S) was appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division) to determine MMI, IR, and extent of injury. The claimant testified that she was injured on (date of injury), when she tripped over a vacuum cleaner cord and fell.

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).

## EXTENT OF INJURY

The Benefit Review Conference Report listed the extent-of-injury issue as follows:

Does the compensable injury of (date of injury), extend to and include cervical sprain and strain, disc herniations at C4-5 and C6-7, disc bulges at L1-2, L2-3, L3-4, L4-5, L5-S1, lumbar radiculopathy, aggravation of lumbar spinal stenosis with neurogenic claudication at L3-4, L4-5, L5-S1, left shoulder rotator cuff strain, and left shoulder impingement syndrome?

We note that the ALJ inadvertently left out the condition of disc bulge at L4-5 in the extent-of-injury issue in the Statement of the Case section of the Decision and Order.

The ALJ's determination that the compensable injury of (date of injury), does not extend to disc herniations at C4-5 and C6-7, disc bulges at L1-2, L2-3, L4-5, and L5-S1, lumbar radiculopathy, or aggravation of lumbar spinal stenosis with neurogenic claudication at L3-4, L4-5, and L5-S1 is supported by sufficient evidence and is affirmed.

The ALJ made a determination that the compensable injury of (date of injury), does not extend to a disc bulge at L4-5 but failed to make a corresponding conclusion of law. See Appeals Panel Decision (APD) 181044, decided June 5, 2018. Because the ALJ's finding that the claimant's disc bulge at L4-5 did not arise out of or naturally flow from the compensable injury of (date of injury), is supported by sufficient evidence, we reform Conclusion of Law No. 4 in part to read as follows:

The compensable injury of (date of injury), does not extend to or include disc herniations at C4-5 and C6-7, disc bulges at L1-2, L2-3, L4-5, L5-S1, lumbar radiculopathy, or aggravation of lumbar spinal stenosis with neurogenic claudication at L3-L4, L4-L5, and L5-S1.

The ALJ found in Finding of Fact No. 4 that the claimant's disc herniations at C4-5 and C6-7, disc bulges at L1-2, L2-3, L4-5, and L5-S1, lumbar radiculopathy, or aggravation of lumbar spinal stenosis with neurogenic claudication at L3-4, L4-5, and L5-S1 did not arise out of or naturally flow from the compensable injury of (date of

injury). That finding is supported by sufficient evidence. However, the ALJ failed to make a finding of fact regarding the disc bulge at L3-4.

Although the ALJ made a conclusion of law, decision, and discussed the disc bulge at L3-4 in her discussion of the evidence, the ALJ failed to make a finding of fact whether the compensable injury of (date of injury), extends to a disc bulge at L3-4.

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. 28 TEX. ADMIN. CODE §142.16 (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. Because the ALJ's decision contains no findings of fact regarding whether the compensable injury of (date of injury), extends to an L3-4 disc bulge, which was an issue properly before the ALJ to resolve, it does not comply with Section 410.168 and Rule 142.16. We therefore reverse that portion of the ALJ's determination that the compensable injury of (date of injury), does not extend to a disc bulge at L3-4 and we remand that portion of the extent-of-injury issue of whether the compensable injury of (date of injury), extends to a disc bulge at L3-4 to the ALJ for further action consistent with this decision. See APD 132339, decided December 12, 2013, and APD 180839, decided June 4, 2018.

### **MMI/IR**

We have reversed and remanded a portion of the ALJ's extent-of-injury determination. We therefore reverse the ALJ's determinations that the claimant reached MMI on January 8, 2020, with a zero percent IR. We remand the issues of MMI and IR to the ALJ for further action consistent with this decision.

### **SUMMARY**

We affirm as reformed that portion of the ALJ's determination that the compensable injury of (date of injury), does not extend to disc herniations at C4-5 and C6-7, disc bulges at L1-2, L2-3, L4-5, and L5-S1, lumbar radiculopathy, or aggravation of lumbar spinal stenosis with neurogenic claudication at L3-4, L4-5, and L5-S1.

We reverse that portion of the ALJ's determination that the compensable injury of (date of injury), does not extend to a disc bulge at L3-4 and we remand that portion of the extent-of-injury issue of whether the compensable injury of (date of injury), extends to a disc bulge at L3-4 to the ALJ for further action consistent with this decision.

We reverse the ALJ's determination that the claimant reached MMI on January 8, 2020, and remand the MMI issue 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 remand the IR issue to the ALJ for further action consistent with this decision.

### **REMAND INSTRUCTIONS**

On remand the ALJ is to correctly list all of the extent-of-injury conditions in the issue statement.

The ALJ is to make a finding of fact regarding the compensability of the disputed extent-of-injury condition of L3-4 disc bulge and corresponding conclusion of law and decision that is consistent and supported by the evidence.

The ALJ is then to determine whether the claimant has reached MMI, and if so on what date, and if the claimant has reached MMI, the claimant's 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 **HARTFORD FIRE 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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Margaret L. Turner  
Appeals Judge

CONCUR:

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Cristina Beceiro  
Appeals Judge

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Carisa Space-Beam  
Appeals Judge