

APPEAL NO. 210524
FILED MAY 27, 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 February 22, 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 sustained on (date of injury), does not extend to post-traumatic arthritis of the right ankle joint with irregularity of the subchondral joint line; (2) the appellant (claimant) reached maximum medical improvement (MMI) on September 6, 2019; (3) the claimant's impairment rating (IR) is five percent; and (4) the claimant did not have disability resulting from an injury sustained on (date of injury), from June 27, 2019, through August 2, 2020, or September 10, 2020, through the date of the CCH. The claimant appealed, disputing the ALJ's determinations of extent of injury, MMI, IR, and disability. The respondent (self-insured) responded, urging affirmance of the disputed extent-of-injury conditions, MMI, IR, and disability determinations.

DECISION

Reversed and remanded.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury); the self-insured accepted a compensable injury in the form of a right ankle strain/sprain; and that the Texas Department of Insurance, Division of Workers' Compensation (Division) appointed (Dr. S) as designated doctor for the purposes of extent of injury, MMI, IR, disability, and return to work. The claimant testified that she rolled her ankle when she stepped in a crack that was on the floor.

The ALJ's decision states that claimant's exhibits 1 through 18 were admitted into evidence. The claimant's exhibit list states that claimant's exhibit 13 contains 4 pages; however, the file forwarded to us for review contains only 3 pages. Because the record is incomplete, it must be remanded for the addition or reconstruction of the missing exhibit. See Appeals Panel Decision (APD) 030543, decided April 18, 2003.

In that the Appeals Panel is allowed only one remand (*see* Section 410.203(c)) we have reviewed the documentary evidence, recording of the CCH, the ALJ's decision, the appeal, and the response. The ALJ found that the March 17, 2020, certification by Dr. S that the claimant reached MMI on September 6, 2019, with a five percent IR for the compensable injury is not contrary to the preponderance of the other medical evidence. We note that Dr. S in his narrative report stated that the whole person impairment (WPI) due to right ankle abnormal motion from the "above table [e]xtension is [three percent] whole person; [i]nversion is [two percent] whole person." Dr. S

combined these impairments and assigned five percent impairment for loss of range of motion (ROM) of the claimant's right ankle. The table provided in the narrative report from Dr. S listed measurements taken of the claimant's right ankle ROM on September 6, 2019, in physical therapy and measurements taken during the physical examination Dr. S performed on March 10, 2020. For loss of ROM of inversion Dr. S noted a measurement of 11° during physical therapy on September 6, 2019, and loss of ROM of inversion during the physical examination he performed on March 10, 2020, as 17°. Dr. S assessed WPI of two percent for inversion. The Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000) (AMA Guides) in Table 43 on page 3/78 provide mild impairment of one percent whole person for measurements of inversion between 10° and 20°, not a two percent WPI as assessed by Dr. S. Dr. S did not assess impairment for loss of ROM for eversion. He noted that the ROM measurement for eversion during physical therapy on September 6, 2019, was 8° but during the designated doctor examination on March 10, 2020, was 11° and 13°. Table 43 on page 3/78 provides for mild impairment of one percent whole person for loss of ROM of eversion between 0° and 10°. See APD 110741, decided July 25, 2011.

We remand the case to the ALJ for a reconstruction of the record and to ask for clarification from the designated doctor regarding the calculation of his IR. The ALJ is to make the response of the designated doctor available to the parties for comment and argument. After giving the parties an opportunity to respond the ALJ will review the record and issue a new decision and order.

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 **STATE OFFICE OF RISK MANAGEMENT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

For service in person the address is:

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Margaret L. Turner
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Carisa Space-Beam
Appeals Judge