

APPEAL NO. 210601  
FILED JUNE 10, 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 March 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 concussion with loss of consciousness, post-traumatic headaches, bilateral temporomandibular disorders (TMD), bilateral vestibular dysfunction, right ear hearing loss, right ear tinnitus, anxiety and depression, cognitive dysfunction, chronic pain syndrome, fracture of tooth #30, cervical sprain and strain, right shoulder sprain and strain, rotator cuff tear, labral tear, right biceps strain and tendinitis, left middle finger sprain, right thigh sprain and strain, left thigh sprain and strain, right knee sprain and strain, left lower leg contusion, right foot strain, or lumbar sprain and strain; (2) (Dr. Sk) was properly appointed as a second designated doctor in accordance with Section 408.0041 and 28 TEX. ADMIN. CODE § 127.5 (Rule 127.5); (3) the appellant (claimant) reached maximum medical improvement (MMI) on August 30, 2019; (4) the claimant's impairment rating (IR) is six percent; and (5) the claimant did not have disability from August 31, 2019, through September 22, 2020, as a result of the compensable injury of (date of injury).

The claimant appealed the ALJ's determinations of extent of injury, Dr. Sk's designated doctor appointment, MMI, IR, and disability. The respondent (carrier) responded, urging affirmance of the ALJ's determinations.

DECISION

Reversed and remanded for reconstruction of the record.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury), in the form of at least the carrier-accepted conditions of contusions of the right lower leg, right chest, right ribs, and dislocation of the right shoulder; (Dr. Sm) was properly appointed as designated doctor on the issues of MMI, IR, extent of injury, return to work, and disability; Dr. Sk was appointed as successor designated doctor on the issue of extent of injury; and the date of statutory MMI in this case is September 22, 2020. The claimant, a retail assistant, was injured on (date of injury), when she tripped on a box in the lunchroom and was thrown across a barstool.

The ALJ's decision and order states that the following exhibits were admitted into evidence: ALJ's Exhibit 1; Claimant's Exhibits 1 through 25; and Carrier's Exhibits A through N. The claimant's Exhibit 5 contains 52 pages of medical records from (Dr. K); however, the case file sent for review does not contain a claimant's Exhibit 5, page 22

or 32. Additionally, the claimant's Exhibit 15 contains 65 pages of medical records from (Dr. A); however, the case file sent for review does not contain a claimant's Exhibit 15, page 63. Because the record is incomplete, it must be remanded for the addition or reconstruction of the missing exhibits. 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 determined that the claimant reached MMI on August 30, 2019, with a six percent IR in accordance with the certification of Dr. Sm examined the claimant on November 25, 2019, and issued three alternate certifications. The first certification, which was adopted by the ALJ, rated what Dr. Sm described as the carrier-defined compensable injuries. This certification considered and rated a right shoulder dislocation, head contusion, right lower leg contusion, right chest contusion, and right ribs contusion. Dr. Sm assigned six percent impairment for range-of-motion (ROM) deficits in the right shoulder, zero percent impairment for the head contusion, zero percent impairment for the right lower leg contusion, zero percent impairment for the right chest contusion, and zero percent impairment for the right ribs contusion. As this certification considers and rates a head contusion, a condition that has not been accepted and has not yet been determined to be part of the compensable injury, it cannot be adopted.

We remand the case to the ALJ for a reconstruction of the record and to make a determination on the claimant's MMI and IR that is supported by the evidence and consistent with this decision.

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 Texas Department of Insurance, Division of Workers' Compensation, 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 **THE TRAVELERS INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
d/b/a CSC-LAWYERS INCORPORATING SERVICE CO  
211 EAST 7TH STREET, SUITE 620  
AUSTIN, TEXAS 78701-3218.**

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Cristina Beceiro  
Appeals Judge

CONCUR:

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Carisa Space-Beam  
Appeals Judge

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Margaret L. Turner  
Appeals Judge