

APPEAL NO. 210651
FILED JUNE 23, 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 April 1, 2021, with the record closing on April 12, 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 a left shoulder supraspinatus or infraspinatus rotator cuff tear, a left shoulder rotator cuff sprain, or left shoulder impingement syndrome; (2) the appellant (claimant) reached maximum medical improvement (MMI) on January 14, 2021; (3) the claimant's impairment rating (IR) is five percent; (4) the claimant had disability resulting from the (date of injury), compensable injury from October 13, 2020, through January 14, 2021; and (5) the claimant did not have disability resulting from the (date of injury), compensable injury from January 15, 2021, through the date of the CCH. The claimant appealed, disputing the ALJ's extent of injury, MMI, and IR determinations, as well as the ALJ's disability determination that was adverse to him. The respondent (carrier) responded, urging affirmance of the ALJ's determinations. The ALJ's determination that the claimant had disability resulting from the (date of injury), compensable injury from October 13, 2020, through January 14, 2021, was not appealed and has become final pursuant to Section 410.169.

DECISION

Reversed and remanded.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury), at least in the form of a left shoulder sprain and strain; the compensable injury does not extend to a right shoulder sprain or strain; and the Texas Department of Insurance, Division of Workers' Compensation (Division) properly appointed (Dr. H) as designated doctor to determine extent of injury, MMI, and IR. The claimant testified he was injured on (date of injury), when he slipped on gravel while trying to push a truck with other people.

EXTENT OF INJURY

The ALJ based her extent-of-injury determination, in part, on the opinion of Dr. H, the designated doctor appointed to determine extent of injury, MMI, and IR. The ALJ stated the following in her discussion:

The designated doctor, [Dr. H], seemed to understand the work-related injury. However, his opinion on extent of injury was not consistent with the

description of the injury event. He noted that the rotator cuff damage can be caused by repetitive trauma or lifting and throwing motions. The work-related activity is not described as a lifting or throwing motion.

Dr. H was appointed to determine, in part, whether the (date of injury), compensable injury extends to a “left shoulder supraspinatus/infraspinatus/rotator cuff tear,” a left shoulder rotator cuff sprain, and left shoulder impingement syndrome. Dr. H in his January 14, 2021, report opined that the compensable injury extended to those conditions. The ALJ is correct that Dr. H noted rotator cuff damage can be caused by repetitive trauma or lifting and throwing motions. However, this language cited by the ALJ is contained in Dr. H’s general discussion explaining what rotator cuff tears are and how they can be caused. After this general discussion, Dr. H specifically described the claimant’s mechanism of injury and goes on to explain in his report that:

[the claimant] was trying to push a broken down truck out of the backyard with [five] other people. He described that his shoulders were flexed, elbows extended, and wrists pronated. He stepped on a vine that was on top of the gravel and slipped but he held onto the truck with both arms. The mechanism of injury is consistent with a left shoulder supraspinatus/infraspinatus/rotator cuff tear, left shoulder rotator cuff sprain, [and] left shoulder impingement syndrome. . . .

Acute tears of the rotator cuff can be the result of forceful injury to the shoulder and straining of the tendon beyond its mechanical limits (emphasis in original). When [the claimant] had both shoulders in flexion, elbows in extension and wrists in pronation to push the truck, it is reasonable that the rotator cuff muscles were stretched beyond their mechanical limit.

[I]t is my medical opinion, based on my education, training, and experience, and within reasonable medical probability that the mechanism of injury did cause or aggravated the additional injuries in question.

In Appeals Panel Decision (APD) 130723, decided May 6, 2013, and APD 130915, decided May 20, 2013, the Appeals Panel reversed the ALJ’s extent-of-injury determination because the ALJ had misread the causation letter in evidence. See also APD 150844, decided June 18, 2015; APD 210402, decided May 5, 2021. Although the ALJ in this case could accept or reject in whole or in part the opinion of Dr. H, or any other evidence, the ALJ based her extent-of-injury determination in part on a misreading of Dr. H’s extent-of-injury opinion. Accordingly, we reverse the ALJ’s determination that

the compensable injury sustained on (date of injury), does not extend to a left shoulder supraspinatus or infraspinatus rotator cuff tear, a left shoulder rotator cuff sprain, or left shoulder impingement syndrome. We remand the issue of whether the (date of injury), compensable injury extends to a left shoulder supraspinatus and infraspinatus rotator cuff tear, a left shoulder rotator cuff sprain, and left shoulder impingement syndrome to the ALJ for further action consistent with this decision.

MMI/IR

Because we have reversed and remanded the extent-of-injury issue, we also reverse the ALJ's determinations that the claimant reached MMI on January 14, 2021, with a five percent IR, and we remand the issues of MMI and IR to the ALJ for further action consistent with this decision.

DISABILITY

Because we have reversed and remanded the extent-of-injury issue, we also reverse the ALJ's determination that the claimant did not have disability resulting from the (date of injury), compensable injury from January 15, 2021, through the date of the CCH, and we remand that issue to the ALJ for further action consistent with this decision.

SUMMARY

We reverse the ALJ's determination that the compensable injury sustained on (date of injury), does not extend to a left shoulder supraspinatus or infraspinatus rotator cuff tear, a left shoulder rotator cuff sprain, or left shoulder impingement syndrome. We remand the issue of whether the (date of injury), compensable injury extends to a left shoulder supraspinatus and infraspinatus rotator cuff tear, a left shoulder rotator cuff sprain, and left shoulder impingement syndrome to the ALJ for further action consistent with this decision.

We reverse the ALJ's determination that the claimant reached MMI on January 14, 2021, 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 five percent, and we remand the issue of IR to the ALJ for further action consistent with this decision.

We reverse the ALJ's determination that the claimant did not have disability resulting from the (date of injury), compensable injury from January 15, 2021, through the date of the CCH, and we remand the issue of whether the claimant had disability

resulting from the (date of injury), compensable injury from January 15, 2021, through the date of the CCH to the ALJ for further action consistent with this decision.

REMAND INSTRUCTIONS

On remand the ALJ is to fully consider Dr. H's extent-of-injury opinion. The ALJ is to make a determination whether the (date of injury), compensable injury extends to a left shoulder supraspinatus and infraspinatus rotator cuff tear, a left shoulder rotator cuff sprain, and left shoulder impingement syndrome based on the evidence. The ALJ is then to determine whether an MMI/IR certification that rates the entire compensable injury is in evidence or whether a new MMI/IR certification by the designated doctor is necessary. The ALJ is then to make a determination of MMI and IR that rates the entire compensable injury based on the evidence. Finally, the ALJ is to make a determination whether the claimant had disability from the (date of injury), compensable injury from January 15, 2021, through the date of the CCH based on 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 **NATIONAL INTERSTATE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701-3218.**

Carisa Space-Beam
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Margaret L. Turner
Appeals Judge