

APPEAL NO. 210736  
FILED JUNE 30, 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 March 30, 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 an L3-4 disc herniation with resulting radiculopathy after an October 6, 2019, motor vehicle accident (MVA); (2) the appellant (claimant) has not yet reached maximum medical improvement (MMI); (3) because the claimant has not reached MMI, an impairment rating (IR) cannot yet be assigned; and (4) the claimant had disability from September 3, 2020, through the date of the CCH resulting from an injury sustained on (date of injury). The claimant appealed, disputing the ALJ's determination of extent of injury. The respondent (carrier) responded, urging affirmance of the disputed extent-of-injury condition. The ALJ's determinations that: (1) the claimant has not yet reached MMI; (2) because the claimant has not reached MMI, an IR cannot yet be assigned; and (3) the claimant had disability from September 3, 2020, through the date of the CCH resulting from an injury sustained on (date of injury), were not appealed and have become final pursuant to Section 410.169.

DECISION

Reversed and remanded.

The parties stipulated, in part, the claimant sustained a compensable injury on (date of injury), which extends to lumbar radiculopathy, L5-S1 left neural foraminal stenosis, and encroachment on the exiting left L5 nerve root; (Dr. P) was properly appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division) as the designated doctor to determine extent of injury, MMI, and IR; and statutory MMI in this matter has not yet been reached. The claimant testified that he was injured on (date of injury), after he picked up a Chiksan swivel joint and took three steps and his back popped.

The ALJ's decision states that claimant's exhibits 1 through 12 were admitted into evidence. The claimant's exhibit list states that claimant's exhibit 7 contains 63 pages; however, the file forwarded to us for review contains only 61 pages. Page 18 and page 44 were not included. Following the hearing, the ALJ determined that there was a misnumbering with regard to page 44 and no specific page was missing. However, the parties at that time did not address claimant's exhibit 7, page 18. In the appeal file is correspondence sent to the ALJ after the issuance of the Decision and Order which acknowledged that claimant's exhibit 7, page 18 was missing from the

exhibits admitted into evidence at the CCH. 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 evidence reflects that the claimant had surgery on August 6, 2019. The operative report in evidence describes the procedure performed as extraforaminal discectomy, L3-4 on the left. In her discussion of the evidence the ALJ referenced a letter that was authored by the claimant's surgeon dated March 29, 2021. The claimant's surgeon opined that the foraminal disc herniation at L3-4 on the left with lumbar radiculopathy was related to the claimant's work injury. The ALJ noted that his explanation as to how the compensable injury event caused the original condition, prior to the MVA, was persuasive. The ALJ further noted that the claimant's surgeon stated that the surgery did improve the claimant's radicular symptoms and the claimant had less intense pain as compared to prior to surgery.

In analyzing the issue before her, the ALJ noted that (Dr. B) explained that in his medical opinion the MVA on October 6, 2019, caused a recurrent disc herniation at L3-4 on the left which caused a severe worsening of his symptoms.

When there is an intervening injury, the correct standard of law is whether the intervening injury is the sole cause of the disputed condition or disability. To prove sole cause regarding a subsequent injury, the burden is on the carrier to prove that the claimant's subsequent injury is the sole contributing factor to the claimant's current condition or disability. APD 033368, decided February 19, 2004. The mere existence of an intervening injury does not establish that the intervening injury is the sole cause of the claimant's condition. There may be more than one producing cause of the claimant's current condition, namely the original compensable injury and the subsequent non-compensable MVA of October 6, 2019.

We remand the case to the ALJ for a reconstruction of the record and to apply the correct legal standard when determining whether the compensable injury of (date of injury), extends to an L3-4 disc herniation with resulting radiculopathy after an October 6, 2019, MVA.

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 **LIBERTY INSURANCE CORPORATION** 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.**

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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