

APPEAL NO. 210738
FILED JULY 8, 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 23, 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), extends to cervicgia, but does not extend to lumbar radiculopathy, cervical radiculopathy, cervical cranial syndrome, lumbago with sciatica right side, lumbago with sciatica left side, sacroiliitis, or coccygodynia; (2) the appellant (claimant) reached maximum medical improvement (MMI) on April 29, 2020; (3) the claimant's impairment rating (IR) is zero percent; and (4) the claimant did not have disability from August 18, 2019, through December 8, 2020, as a result of the compensable injury of (date of injury). The claimant appealed, disputing that portion of the ALJ's extent-of-injury determination that was against her, as well as the ALJ's determinations of MMI/IR and disability. The respondent (self-insured) responded, urging affirmance of the disputed determinations.

The ALJ's determination that the compensable injury of (date of injury), extends to cervicgia was not appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed in part and reversed and remanded in part.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury), in the form of at least the self-insured accepted conditions of cervical sprain/strain, lumbar sprain/strain, and cervicgia; and (Dr. B) was properly appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division) as the designated doctor on the issues of MMI, IR, and extent of injury. The claimant, a commercial solid waste supervisor, was injured on (date of injury), when she was greasing a container truck, stepped on a toolbox that opened, and fell. The claimant's testimony reflects that she struck her tailbone on the toolbox before falling to the ground.

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).

NEWLY DISCOVERED EVIDENCE

Documents submitted for the first time on appeal are generally not considered unless they constitute newly discovered evidence. See *generally*, Appeals Panel Decision (APD) 091375, decided December 2, 2009; *Black v. Wills*, 758 S.W.2d 809 (Tex. App.—Dallas 1988, no writ). In determining whether new evidence submitted with an appeal or response requires remand for further consideration, the Appeals Panel considers whether the evidence came to the knowledge of the party after the hearing, whether it is cumulative of other evidence of record, whether it was not offered at the hearing due to a lack of diligence, and whether it is so material that it would probably result in a different decision. See APD 051405, decided August 9, 2005. The claimant submits various documents with her appeal, some of which were admitted into evidence during the hearing and some for the first time on appeal, such as the radiographic imaging. We do not agree that the documents submitted by the claimant for the first time on appeal meet the requirements for newly discovered evidence. Therefore, the documents attached to the claimant's appeal were not considered by the Appeals Panel.

EXTENT OF INJURY

The ALJ's determination that the compensable injury of (date of injury), does not extend to lumbar radiculopathy, cervical radiculopathy, cervical cranial syndrome, lumbago with sciatica right side, lumbago with sciatica left side, sacroiliitis, or coccygodynia is supported by sufficient evidence and is affirmed.

MMI/IR

The ALJ's determinations that the claimant reached MMI on April 29, 2020, with a zero percent IR are supported by sufficient evidence and are affirmed.

DISABILITY

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. Under 28 TEX. ADMIN. CODE § 142.16 (Rule 142.16), 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.

In the ALJ's decision, the ALJ indicated in Conclusion of Law No. 6 and in the Decision section that the claimant did not have disability from August 18, 2019, through

December 8, 2020, as a result of the compensable injury of (date of injury). However, the ALJ did not make a specific finding of fact regarding the issue of disability as was certified in this case and as required by Section 410.168 and Rule 142.16. See APD 132339, decided December 12, 2013; APD 150510, decided April 21, 2015; APD 162262, decided January 10, 2017; APD 181349, decided August 15, 2018.

Accordingly, we reverse the ALJ's determination that the claimant did not have disability from August 18, 2019, through December 8, 2020, as a result of the compensable injury of (date of injury), as being incomplete, and we remand the issue of whether the claimant had disability from August 18, 2019, through December 8, 2020, as a result of the compensable injury of (date of injury), back to the ALJ for further action consistent with this decision.

SUMMARY

We affirm the ALJ's determination that the compensable injury of (date of injury), does not extend to lumbar radiculopathy, cervical radiculopathy, cervical cranial syndrome, lumbago with sciatica right side, lumbago with sciatica left side, sacroiliitis, or coccygodynia.

We affirm the ALJ's determinations that the claimant reached MMI on April 29, 2020, with a zero percent IR.

We reverse the ALJ's determination that the claimant did not have disability from August 18, 2019, through December 8, 2020, as a result of the compensable injury of (date of injury), as being incomplete, and we remand the issue of whether the claimant had disability from August 18, 2019, through December 8, 2020, as a result of the compensable injury of (date of injury), back to the ALJ for further action consistent with this decision.

REMAND INSTRUCTIONS

On remand the ALJ is to make a finding of fact, conclusion of law, and a decision as to whether the claimant had disability from August 18, 2019, through December 8, 2020, as a result of the compensable injury of (date of injury).

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 **TEXAS POLITICAL SUBDIVISIONS JOINT SELF-INSURANCE FUND (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**MR. STEPHEN R. KOON, DIRECTOR OF CLAIMS
14990 LANDMARK BLVD., SUITE 300
DALLAS, TEXAS 75254-6758.**

Cristina Beceiro
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge