

APPEAL NO. 210979
FILED AUGUST 13, 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 September 29, 2020, with the record closing on May 17, 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 a lumbar sprain, right knee strain, lumbago, left knee grade II chondromalacia of the medial tibial plateau, left knee grade IV chondromalacia of the trochlea, left knee grade II lateral meniscus tear, and right knee oblique flap tear of the posterior horn of the medial meniscus; (2) the compensable injury of (date of injury), does not extend to L3-4 degenerative disc disease, L4-5 degenerative disc disease, L3-4 right lumbosacral radiculopathy, acquired spondylolisthesis, or right ankle contusion; (3) the appellant (claimant) reached maximum medical improvement (MMI) on January 8, 2019; and (4) the claimant's impairment rating (IR) is 13%.

The claimant appealed, disputing that portion of the ALJ's extent-of-injury determination that was adverse to him, as well as the ALJ's MMI and IR determinations. The respondent (carrier) responded, urging affirmance of the appealed determinations. The ALJ's determination that the compensable injury of (date of injury), extends to a lumbar sprain, right knee strain, lumbago, left knee grade II chondromalacia of the medial tibial plateau, left knee grade IV chondromalacia of the trochlea, left knee grade II lateral meniscus tear, and right knee oblique flap tear of the posterior horn of the medial meniscus 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), which extends to a left knee strain and left knee medial meniscus tear, and the statutory date of MMI is June 8, 2019. The claimant testified he was injured on (date of injury), while loading a forklift onto a truck. The claimant was tightening chains to secure the forklift and fell off the truck, landing on 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).

EXTENT OF INJURY

That portion of the ALJ's determination that the compensable injury of (date of injury), does not extend to L3-4 degenerative disc disease, L4-5 degenerative disc disease, L3-4 right lumbosacral radiculopathy, acquired spondylolisthesis, or right ankle contusion is supported by sufficient evidence and is affirmed.

The parties agreed at the CCH that the extent-of-injury conditions at issue were the following: left knee grade II chondromalacia of medial femoral condyle, left knee grade IV chondromalacia of trochlea, left knee grade II chondromalacia of medial tibia plateau, left knee lateral meniscus tear¹, right knee oblique flap tear of the posterior horn of the medial meniscus, lumbago, acquired spondylolisthesis, L3-4 right lumbosacral radiculopathy, L3-4 degenerative disc disease, L4-5 degenerative disc disease, lumbar sprain, right knee strain, and a right ankle contusion. The ALJ resolved all of the disputed conditions with the exception of left knee grade II chondromalacia of medial femoral condyle.

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. 28 Tex. Admin. Code § 142.16 (Rule 142.16) provides that 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. The decision and order in this case does not contain any findings of fact, conclusions of law, or a decision regarding left knee grade II chondromalacia of medial femoral condyle, a condition which was certified in this case and as required by Section 410.168 and Rule 142.16. See Appeals Panel Decision (APD) 132339, decided December 12, 2013; APD 150510, decided April 21, 2015; APD 162262, decided January 10, 2017; APD 181349, decided August 15, 2018; and APD 210332, decided May 3, 2021. Accordingly, we reverse the ALJ's extent-of-injury determination as incomplete, and we remand the issue of whether the compensable injury of (date of injury), extends to left knee grade II chondromalacia of medial femoral condyle to the ALJ for further action consistent with this decision.

MMI/IR

¹ We note the parties agreed that one of the extent-of-injury conditions at issue was a left knee lateral meniscus tear. However, the ALJ determined the compensable injury extended to a left knee grade II lateral meniscus tear. This determination was not appealed and has become final pursuant to Section 410.169.

Because we have reversed and remanded a portion of the ALJ's extent-of-injury determination, we also reverse the ALJ's determination that the claimant reached MMI on January 8, 2019, and that the claimant's IR is 13%. We note the ALJ based her MMI and IR determinations on the report of (Dr. K), the post-designated doctor required medical examination doctor. However, Dr. K opined that the claimant reached MMI on June 8, 2019, not January 8, 2019. We remand the issues of MMI and IR to the ALJ for further action consistent with this decision.

SUMMARY

We affirm that portion of the ALJ's determination that the compensable injury of (date of injury), does not extend to L3-4 degenerative disc disease, L4-5 degenerative disc disease, L3-4 right lumbosacral radiculopathy, acquired spondylolisthesis, or right ankle contusion.

We reverse the ALJ's extent-of-injury determination as incomplete, and we remand the issue of whether the compensable injury of (date of injury), extends to left knee grade II chondromalacia of medial femoral condyle to the ALJ for further action consistent with this decision.

We reverse the ALJ's determination that the claimant reached MMI on January 8, 2019, 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 13%, and we remand the issue of IR to the ALJ for further action consistent with this decision.

REMAND INSTRUCTIONS

On remand the ALJ is to make findings of fact, conclusions of law, and a decision on whether the compensable injury of (date of injury), extends to left knee grade II chondromalacia of medial femoral condyle that is consistent and supported by the evidence. The ALJ is then to determine when the claimant reached MMI and the claimant's IR based on the entire compensable 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 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 **ZURICH AMERICAN 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