

APPEAL NO. 211383
FILED OCTOBER 7, 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 January 6, 2021, with the record closing on July 19, 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 left shoulder rotator cuff tear, concussion, and acute post-traumatic headaches; (2) the compensable injury of (date of injury), does not extend to post-traumatic stress disorder (PTSD), injury to the right eye orbit, or L4-5 disc bulge; (3) the appellant (claimant) reached maximum medical improvement (MMI) on February 20, 2021; and (4) the claimant's impairment rating (IR) is 28%. The claimant appeals that portion of the ALJ's extent-of-injury determination that was against him. The respondent (carrier) responded and urged affirmance of the ALJ's determination.

The ALJ's determinations that: the compensable injury of (date of injury), extends to left shoulder rotator cuff tear, concussion, and acute post-traumatic headaches; the claimant reached MMI on February 20, 2021; and the claimant's IR is 28% were not appealed and have 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 an injury to the conjunctiva of the right eye, injury to the right eye, glaucoma secondary to right eye trauma, traumatic optic neuropathy of the right eye, cervical strain, and cervical sprain and that (Dr. M) was properly appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division) to serve as the designated doctor to determine extent of injury, MMI, and IR. We note that the carrier information at the end of the ALJ's decision has the incorrect name and address of the carrier's registered agent. The claimant was injured on (date of injury), while working as a delivery driver, when a co-worker threw a 20-25 pound package that bounced off a basket and hit him in the right eye, head, and neck.

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

The ALJ's determination that the compensable injury of (date of injury), does not extend to PTSD or L4-5 disc bulge is supported by sufficient evidence and is affirmed.

The ALJ also determined that the compensable injury of (date of injury), does not extend to injury to the right eye orbit. Following the CCH in this case, the ALJ determined that a new designated doctor examination was necessary to address the extent-of-injury conditions. (Dr. A) was subsequently appointed by the Division to address the extent-of-injury conditions in dispute, as well as MMI and IR. Dr. A examined the claimant on April 1, 2021, and determined that the compensable injury of (date of injury), extends to injury to the right eye orbit, concussion, and acute post-traumatic headaches. He also found that the left shoulder rotator cuff tear, PTSD, and L4-5 disc bulge were not compensable. In her discussion of the evidence, the ALJ stated that, "Dr. [A's] explanation regarding his opinion on each of the disputed conditions was persuasive and supported by the preponderance of the other medical evidence." However, in Finding of Fact No. 5, the ALJ determined, in part, that the compensable injury of (date of injury), was not a producing cause of injury to the right eye orbit. The ALJ determined in Conclusion of Law No. 4 and in her decision, in part, that the compensable injury of (date of injury), does not extend to injury to the right eye orbit. The ALJ's discussion of the evidence is inconsistent with her determination of extent of injury regarding the disputed condition of injury to the right eye orbit. Accordingly, we reverse the ALJ's determination that the compensable injury of (date of injury), does not extend to injury to the right eye orbit and remand the issue of whether the compensable injury of (date of injury), extends to injury to the right eye orbit to the ALJ for further action consistent with this decision.

REMAND INSTRUCTIONS

On remand the ALJ is to make a determination regarding whether the compensable injury of (date of injury), extends to injury to the right eye orbit that is supported by the evidence and to clarify the inconsistency between her findings and determinations and the discussion of the evidence. The ALJ is also to correct the name and address of the carrier's registered agent.

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 Appeals Panel Decision 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **FALLS LAKE NATIONAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
1999 BRYAN STREET, SUITE 900
DALLAS, TEXAS 75201-3136.**

Cristina Beceiro
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge