

APPEAL NO. 211600
FILED NOVEMBER 17, 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 was held on August 12, 2021, with the record closing on August 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), does not extend to right shoulder rotator cuff impingement syndrome; (2) the appellant (claimant) reached maximum medical improvement (MMI) on May 5, 2020; (3) the claimant's impairment rating (IR) is four percent; and (4) the claimant did not have disability for the period of May 6, 2020, through January 28, 2021. The claimant appealed, disputing the ALJ's extent-of-injury determination, as well as the ALJ's determinations of MMI/IR and disability. The respondent (carrier) responded, urging affirmance of the disputed determinations.

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), and the carrier has accepted a right shoulder strain and a right shoulder rotator cuff tear as the compensable injury of (date of injury). The claimant testified that he was injured while pulling a hose from a vehicle. The evidence reflects that (Dr. B) was appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division) for the purposes of MMI, IR, and extent of injury.

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 right shoulder rotator cuff impingement syndrome is supported by sufficient evidence and is affirmed.

MMI/IR

The ALJ's determinations that the claimant reached MMI on May 5, 2020, with a four 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 for the period of May 6, 2020, through January 28, 2021. 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 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 211064, decided September 1, 2021.

Accordingly, we reverse the ALJ's determination that the claimant did not have disability for the period of May 6, 2020, through January 28, 2021, as being incomplete, and we remand the issue of whether the claimant had disability for the period of May 6, 2020, through January 28, 2021, 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 right shoulder rotator cuff impingement syndrome.

We affirm the ALJ's determinations that the claimant reached MMI on May 5, 2020, with a four percent IR.

We reverse the ALJ's determination that the claimant did not have disability for the period of May 6, 2020, through January 28, 2021, as being incomplete, and we remand the issue of whether the claimant had disability for the period of May 6, 2020, through January 28, 2021, as a result of the compensable injury of (date of injury), 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 for the period of May 6, 2020, through January 28, 2021, 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 **BERKSHIRE HATHAWAY HOMESTATE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
d/b/a CSC-LAWYERS
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701-3218.**

Margaret L. Turner
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Carisa Space-Beam
Appeals Judge