

APPEAL NO. 211971
FILED JANUARY 28, 2022

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 April 21, 2021, and July 20, 2021, with the record closing on October 25, 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 stroke, post-concussive syndrome, short-term memory loss, adjustment syndrome, anxiety, bilateral blurred/loss of vision, left side jaw injury, left shoulder rotator cuff tear, intracranial hemorrhage, lumbar spine injury, or thoracic spine injury beyond a thoracic sprain; (2) the appellant (claimant) reached maximum medical improvement (MMI) on December 4, 2019; (3) the impairment rating (IR) is zero percent; and (4) (Dr. T) was not appointed as the designated doctor in accordance with Section 408.0041 and 28 Tex. Admin. Code § 127.5 (Rule 127.5).

The claimant appealed all the ALJ's determinations. The respondent (self-insured) responded, urging affirmance of the determinations.

DECISION

Affirmed in part and reversed and remanded in part.

The parties stipulated, in part, that: (1) Dr. T was appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division) to address the issues of extent of injury, MMI, and IR; (2) the self-insured has accepted the compensable injury extends to head contusion, left shoulder contusion, cervical sprain, thoracic sprain, and left ankle sprain; and (3) the date of statutory MMI is February 23, 2021. The claimant, a juvenile supervision officer, sustained a compensable injury on (date of injury), while restraining a resident who had been involved in a fight. He testified that he slipped on food and slid into a brick wall, hitting his head and left shoulder.

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).

DESIGNATED DOCTOR APPOINTMENT

Rule 127.130(b)(9)(A) provides, in part, that to examine traumatic brain injuries, including concussion and post-concussion syndrome, a designated doctor must be board certified in neurological surgery, neurology, physical medicine and rehabilitation, or psychiatry. Rule 127.130(b)(9)(H) provides, in part, that to examine heart or cardiovascular conditions, a designated doctor must be board certified in internal medicine, emergency medicine, occupational medicine, thoracic and cardiac surgery, family medicine, preventive medicine/occupational-environmental medicine, preventive medicine/occupational, thoracic and cardiovascular surgery, or family practice and osteopathic manipulative treatment.

The ALJ states in his decision that the record reflects that Dr. T is not board certified in any of these specialties. The ALJ found in Finding of Fact No. 6 that Dr. T was not properly qualified to address post-concussive syndrome pursuant to Rule 127.130(b)(9)(A) because he did not have the appropriate board certification. In Finding of Fact No. 7, the ALJ found that Dr. T was not properly qualified to address stroke pursuant to Rule 127.130(b)(9)(H) because he did not have the appropriate board certification. The ALJ's determination that Dr. T was not properly appointed as the designated doctor in accordance with Section 408.0041 and Rule 127.5 is supported by sufficient evidence and is affirmed.

EXTENT OF INJURY

Section 408.0041 provides, in part, that an employee may request and the Division may order a medical examination to resolve questions regarding the extent of the employee's compensable injury. We hold that under the facts of this case, the parties should receive the benefit of an impartial examination by a qualified designated doctor as contemplated by Section 408.0041, Rule 127.130(b)(9)(A), and Rule 127.130(b)(9)(H). See Appeals Panel Decision (APD) 170849, decided June 6, 2017. Accordingly, we reverse the ALJ's determination that the compensable injury of (date of injury), does not extend to stroke, post-concussive syndrome, short-term memory loss, adjustment syndrome, anxiety, bilateral blurred/loss of vision, left side jaw injury, left shoulder rotator cuff tear, intracranial hemorrhage, lumbar spine injury, or thoracic spine injury beyond a thoracic sprain, and we remand the issue of extent of injury to the ALJ for the appointment of a qualified designated doctor.

MMI AND IR

As we have reversed and remanded the ALJ's determination regarding extent of injury, we also reverse the ALJ's determinations that the claimant reached MMI on

December 4, 2019, and the claimant's IR is zero percent. We remand the issues of MMI and IR to the ALJ for further action consistent with this decision.

SUMMARY

We affirm the ALJ's determination that Dr. T was not properly appointed as the designated doctor in accordance with Section 408.0041 and Rule 127.5.

We reverse the ALJ's determination that the compensable injury of (date of injury), does not extend to stroke, post-concussive syndrome, short-term memory loss, adjustment syndrome, anxiety, bilateral blurred/loss of vision, left side jaw injury, left shoulder rotator cuff tear, intracranial hemorrhage, lumbar spine injury, or thoracic spine injury beyond a thoracic sprain, and we remand the issue of extent of injury to the ALJ for the appointment of a qualified designated doctor.

We reverse the ALJ's determinations that the claimant reached MMI on December 4, 2019, and the claimant's IR is zero percent, and we remand the issues of MMI and IR to the ALJ for further action consistent with this decision.

REMAND INSTRUCTIONS

On remand, the ALJ is to request a designated doctor qualified to examine traumatic brain injuries and heart or cardiovascular conditions to be appointed to address the issues of extent of injury, MMI, and IR.

The ALJ is to advise the newly appointed designated doctor that the compensable injury of (date of injury), includes a head contusion, left shoulder contusion, cervical sprain, thoracic sprain, and left ankle sprain. The ALJ is then to request that the designated doctor examine the claimant and opine regarding whether the compensable injury of (date of injury), extends to stroke, post-concussive syndrome, short-term memory loss, adjustment syndrome, anxiety, bilateral blurred/loss of vision, left side jaw injury, left shoulder rotator cuff tear, intracranial hemorrhage, lumbar spine injury, or thoracic spine injury beyond a thoracic sprain.

The ALJ is to request from the designated doctor a certification of MMI and IR with regard to the accepted compensable injury and alternate certifications of MMI/IR with regard to the accepted compensable injury and the disputed extent-of-injury conditions. The ALJ is to inform the designated doctor that the date of statutory MMI is February 23, 2021. The ALJ is to ensure that the designated doctor has all the pertinent medical records to determine extent of injury, MMI, and IR. After the designated doctor examines the claimant and submits the reports, the parties are to be provided with the Designated Doctor Examination Data Report (DWC-68), the Reports

of Medical Evaluation (DWC-69s) and narratives and are to be allowed an opportunity to respond. The ALJ is to make determinations regarding extent of injury, MMI, and IR that are supported by the evidence and consistent with this decision.

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 **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**NAME
ADDRESS
CITY, TEXAS ZIP CODE.**

Cristina Beceiro
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge