

APPEAL NO. 212095
FILED FEBRUARY 22, 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 (CCH) was held on July 28, 2021, with the record closing on November 15, 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 sustained on (date of injury), extends to a contusion of the right ankle, contusion of the right thumb with damage to the nail bed, contusion of the right forearm, right shoulder strain of other muscles, fascia, and tendons and upper arm, and left shoulder strain and upper arm of other muscles, fascia, and tendons, bruise of the head, and a lumbar strain; (2) the compensable injury sustained on (date of injury), does not extend to right shoulder diffuse thickening/tendinosis, right shoulder full-thickness tear, right shoulder 50% partial-thickness articular surface tear of the distal infraspinatus tendon, right shoulder type III acromion process or impingement, right shoulder possible labrum tear, left shoulder tendinosis/thickening of the distal supraspinatus or subscapularis tendons, left shoulder full-thickness tear, left shoulder possible tear of biceps labral complex or proximal long head of the biceps tendon, L2-3 broad-based posterior disc bulge, 6 mm right posterior midline or right paramedian disc herniation or a right lateral recess effacement with impingement on the thecal sac and descending nerve roots, L4-5 broad-based posterior disc bulge, L5-S1 broad-based posterior disc bulge, or right knee horizontal tear of the posterior horn of the medial tibial plateau and in the medial femoral condyle; (3) the appellant (claimant) reached maximum medical improvement (MMI) on January 8, 2020; and (4) the claimant's impairment rating (IR) is two percent.

The claimant appealed the ALJ's extent-of-injury determination that was adverse to him, as well as the ALJ's MMI and IR determinations. The appeal file does not contain a response from the respondent (carrier) to the claimant's appeal. The ALJ's determination that the compensable injury sustained on (date of injury), extends to a contusion of the right ankle, contusion of the right thumb with damage to the nail bed, contusion of the right forearm, right shoulder strain of other muscles, fascia, and tendons and upper arm, and left shoulder strain and upper arm of other muscles, fascia, and tendons, bruise of the head, and a lumbar strain was not appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed in part, reversed by striking in part, and reversed and remanded in part.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury), at least in the form of a cervical strain, bilateral shoulder strains, and

a right hand and wrist contusion, and that the Texas Department of Insurance, Division of Workers' Compensation (Division) selected (Dr. L) as designated doctor to address MMI, IR, and the extent of the compensable injury. The claimant was injured on (date of injury), while loading debris into a "J" crane. The claimant was struck on his hard hat by an arm from a lever of the outrigger and on his right leg by a pallet jack.

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 sustained on (date of injury), does not extend to right shoulder diffuse thickening/tendinosis, right shoulder full-thickness tear, right shoulder 50% partial-thickness articular surface tear of the distal infraspinatus tendon, right shoulder type III acromion process or impingement, right shoulder possible labrum tear, left shoulder tendinosis/thickening of the distal supraspinatus or subscapularis tendons, left shoulder full-thickness tear, left shoulder possible tear of biceps labral complex or proximal long head of the biceps tendon, L2-3 broad-based posterior disc bulge, 6 mm right posterior midline or right paramedian disc herniation or a right lateral recess effacement with impingement on the thecal sac and descending nerve roots, L4-5 broad-based posterior disc bulge, or L5-S1 broad-based posterior disc bulge is supported by sufficient evidence and is affirmed.

The extent-of-injury issue before the ALJ and as certified by the parties at the CCH included the following three conditions: contusion of the right knee, right knee horizontal tear of the posterior horn of the medial meniscus, and right knee mild bone marrow edema in the anterior medial aspect of the medial tibial plateau and in the medial femoral condyle. However, the decision and order, Findings of Fact, Conclusions of Law, and decision sections all refer to right knee horizontal tear of the posterior horn of the medial tibial plateau and in the medial femoral condyle. That condition was not agreed to by the parties as part of the extent-of-injury issue or actually litigated by the parties, and the record does not reflect that the issue was amended after the CCH. The ALJ exceeded the scope of the extent-of-injury determination before her. Accordingly, we reverse the ALJ's decision by striking all references to right knee

horizontal tear of the posterior horn of the medial tibial plateau and in the 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 the conditions of contusion of the right knee, right knee horizontal tear of the posterior horn of the medial meniscus, and right knee mild bone marrow edema in the anterior medial aspect of the medial tibial plateau and in the medial femoral condyle, conditions which were certified in this case and required by Section 410.168 and Rule 142.16. See Appeals Panel Decision (APD) 210979, decided August 13, 2021; 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 contusion of the right knee, right knee horizontal tear of the posterior horn of the medial meniscus, and right knee mild bone marrow edema in the anterior medial aspect of the medial tibial plateau and in the medial femoral condyle to the ALJ for further action consistent with this decision.

MMI/IR

Because we have reversed and remanded a portion of the ALJ's extent-of-injury determination, we also reverse the ALJ's determinations that the claimant reached MMI on January 8, 2020, with a two percent IR, and 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 sustained on (date of injury), does not extend to right shoulder diffuse thickening/tendinosis, right shoulder full-thickness tear, right shoulder 50% partial-thickness articular surface tear of the distal infraspinatus tendon, right shoulder type III acromion process or impingement, right shoulder possible labrum tear, left shoulder tendinosis/thickening of the distal supraspinatus or subscapularis tendons, left shoulder full-thickness tear, left shoulder possible tear of biceps labral complex or proximal long head of the biceps tendon, L2-3 broad-based posterior disc bulge, 6 mm right posterior midline or right paramedian disc herniation or a right lateral recess effacement with

impingement on the thecal sac and descending nerve roots, L4-5 broad-based posterior disc bulge, or L5-S1 broad-based posterior disc bulge.

We reverse the ALJ's decision by striking all references to right knee horizontal tear of the posterior horn of the medial tibial plateau and in the medial femoral condyle.

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 contusion of the right knee, right knee horizontal tear of the posterior horn of the medial meniscus, and right knee mild bone marrow edema in the anterior medial aspect of the medial tibial plateau and in the medial femoral condyle for further action consistent with this decision.

We reverse the ALJ's determinations that the claimant reached MMI on January 8, 2020, with a two percent IR, 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 make findings of fact, conclusions of law, and a decision on whether the compensable injury of (date of injury), extends to contusion of the right knee, right knee horizontal tear of the posterior horn of the medial meniscus, and right knee mild bone marrow edema in the anterior medial aspect of the medial tibial plateau and in the medial femoral condyle. 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 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 **AMERICAN ZURICH 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