

APPEAL NO. 220106
FILED APRIL 1, 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 July 21, 2021, with the record closing on December 13, 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), does extend to bilateral tinnitus, concussion, post-concussion syndrome, post-traumatic headache, high frequency sensorineural hearing loss, and vertigo; (2) the compensable injury sustained on (date of injury), does not extend to lattice degeneration of the left eye, posterior vitreous detachment of the left eye, or a deviated septum; (3) (Dr. P) was properly appointed to serve as designated doctor in accordance with Section 408.0041 and Texas Department of Insurance, Division of Workers' Compensation (Division) rules; (4) the appellant/cross-respondent (claimant) reached maximum medical improvement (MMI) on April 29, 2021; and (5) the claimant's impairment rating (IR) is zero percent.

The claimant appealed that portion of the ALJ's extent-of-injury determination that was against him, as well as the ALJ's MMI and IR determinations. The respondent/cross-appellant (self-insured) responded, urging affirmance of that portion of the ALJ's extent-of-injury determination in its favor. The self-insured cross-appealed, disputing that portion of the ALJ's extent of injury against it, as well as the ALJ's determinations of MMI, IR, and proper appointment of Dr. P. The appeal file does not contain a response from the claimant to the self-insured's cross-appeal.

DECISION

Reformed in part, modified in part, and reversed and remanded in part.

The parties stipulated, in part, that: (1) on (date of injury), the claimant sustained a compensable injury at least in the form of a lumbar sprain and strain, cervical sprain and strain, nose abrasion, left cheek laceration, abrasions of the right front wall of the thorax and abdominal wall, dizziness, and giddiness; (2) the second Division-selected designated doctor, Dr. P, was asked to address the date of MMI, extent of the compensable injury, and disability; and (3) the third Division-selected designated doctor, (Dr. L), was asked to address MMI, IR, and extent of the compensable injury. A review of the record indicates that the parties stipulated that Dr. P was also asked to address IR. Therefore, we reform Finding of Fact No. 1.F. to read that: the second Division-selected designated doctor, Dr. P, was asked to address the date of MMI, IR, extent of the compensable injury, and disability. We note the Evidence Presented section of the decision and order states claimant's exhibits 1-17 were admitted. However, the

recording of the CCH reflects the claimant sought to admit claimant's exhibits 1-8. The claimant's exhibit list states there are 8 exhibits total, and the appeal file does not contain claimant's exhibits 9-17. We therefore modify the decision to state claimant's exhibits 1-8 were admitted to conform to the evidence that was actually admitted at the CCH.

The claimant, a delivery driver, was injured on (date of injury), when he pulled over to examine his tire, tried to cool down the brakes, and the tire exploded in front of him. The claimant testified that he lost consciousness at the time of the injury.

PROPER APPOINTMENT OF DESIGNATED DOCTOR

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.

A review of the record indicates that the ALJ agreed to add the issue: Were Dr. P and Dr. L appointed to serve as designated doctor in accordance with Section 408.0041 and Division rules? The ALJ states in Conclusion of Law No. 5, the summary paragraph on page one and Decision section on page seven that Dr. P was properly appointed to serve as designated doctor in accordance with Section 408.0041 and Division rules. Although the ALJ made a conclusion of law, decision, and addressed the issue in her discussion of the evidence, the ALJ failed to make a finding of fact regarding whether Dr. P was properly appointed. Additionally, the ALJ failed to make any findings of fact, conclusions of law, or a decision regarding whether Dr. L was properly appointed. Because the ALJ's decision contains no findings of fact regarding the proper appointment of Dr. P issue and no findings of fact, conclusions of law, or a decision regarding the proper appointment of Dr. L, which was an issue properly before the ALJ to resolve, it does not comply with Section 410.168 and Rule 142.16. We therefore reverse the ALJ's determination that Dr. P was properly appointed to serve as designated doctor in accordance with Section 408.0041 and Division rules as being incomplete, and we remand the issue of whether Dr. P and Dr. L were properly appointed to serve as designated doctors in accordance with Section 408.0041 and Division rules to the ALJ for further action consistent with this decision. See Appeals Panel Decision (APD) 132339, decided December 12, 2013; APD 180839, decided June 4, 2018; and APD 181357, decided July 30, 2018.

EXTENT OF INJURY

As we have remanded the issue of whether Dr. P and Dr. L were properly appointed to serve as designated doctors in accordance with Section 408.0041 and Division rules, we must also remand the extent-of-injury determination which was based on those doctors' reports. Therefore, the ALJ's determinations that the compensable injury on (date of injury), extends to bilateral tinnitus, concussion, post-concussion syndrome, post-traumatic headache, high frequency sensorineural hearing loss, and vertigo are reversed. Additionally, the ALJ's determinations that the compensable injury on (date of injury), does not extend to lattice degeneration of the left eye, posterior vitreous detachment of the left eye, or a deviated septum are reversed. The issue of whether the compensable injury on (date of injury), extends to bilateral tinnitus, concussion, post-concussion syndrome, post-traumatic headache, high frequency sensorineural hearing loss, vertigo, lattice degeneration of the left eye, posterior vitreous detachment of the left eye, and a deviated septum is remanded to the ALJ for further action consistent with this decision.

MMI AND IR

Since we have remanded the extent-of-injury issue, we also reverse the ALJ's determinations that the claimant reached MMI on April 29, 2021, with a zero percent IR. We remand the issues of MMI and IR to the ALJ for further action consistent with this decision.

SUMMARY

We reform Finding of Fact No. 1.F. to read that: the second Division-selected designated doctor, Dr. P, was asked to address the date of MMI, IR, extent of the compensable injury, and disability.

We modify the decision to state claimant's exhibits 1-8 were admitted to conform to the evidence that was actually admitted at the CCH.

We reverse the ALJ's determination that Dr. P was properly appointed to serve as designated doctor in accordance with Section 408.0041 and Division rules as being incomplete, and we remand the issue of whether Dr. P and Dr. L were properly appointed to serve as designated doctors in accordance with Section 408.0041 and Division rules to the ALJ for further action consistent with this decision.

We reverse the ALJ's determinations that the compensable injury on (date of injury), extends to bilateral tinnitus, concussion, post-concussion syndrome, post-traumatic headache, high frequency sensorineural hearing loss, and vertigo and that the compensable injury on (date of injury), does not extend to lattice degeneration of the left eye, posterior vitreous detachment of the left eye, or a deviated septum. We remand

the issue of whether the compensable injury on (date of injury), extends to bilateral tinnitus, concussion, post-concussion syndrome, post-traumatic headache, high frequency sensorineural hearing loss, vertigo, lattice degeneration of the left eye, posterior vitreous detachment of the left eye, and a deviated septum to the ALJ for further action consistent with this decision.

We reverse the ALJ's determinations that the claimant reached MMI on April 29, 2021, with a zero percent IR, and we remand the issues of MMI and IR to the ALJ.

REMAND INSTRUCTIONS

On remand the ALJ is to make a finding of fact, conclusion of law and a decision regarding whether Dr. P and Dr. L were properly appointed to serve as designated doctors in accordance with Section 408.0041 and Division rules. The ALJ is then to make a finding of fact, conclusion of law, and a decision regarding whether the compensable injury on (date of injury), extends to bilateral tinnitus, concussion, post-concussion syndrome, post-traumatic headache, high frequency sensorineural hearing loss, vertigo, lattice degeneration of the left eye, posterior vitreous detachment of the left eye, and a deviated septum. Finally, the ALJ is to make a finding of fact, conclusion of law and a decision regarding the issues of MMI and IR.

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 **FEDEX FREIGHT, INC. (a certified self-insured)** 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