

APPEAL NO. 220214
FILED MARCH 15, 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 December 15, 2021, in (city), Texas, with (administrative law judge) presiding as the administrative law judge (ALJ). The ALJ resolved the disputed issue by deciding that the compensable injury of (date of injury), does not extend to a right shoulder rotator cuff tear, right coracohumeral sprain, or right shoulder impingement. The appellant (claimant) appealed the ALJ's determination. The respondent (self-insured) responded, urging affirmance of the ALJ's determination.

DECISION

Reversed and remanded.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury), that extends to a right shoulder strain. The claimant, a bus operator for the employer, was injured on (date of injury), while driving a bus.

The ALJ determined the compensable injury did not extend to the claimed conditions. The ALJ stated in the discussion portion of the decision that the claimant testified she sustained a compensable injury on (date of injury), "when a freezer door swung hard and hit her right wrist."

However, the claimant did not testify she was injured by a freezer door. The claimant testified she was injured on (date of injury), while driving a bus. The claimant testified she was driving the bus early in the morning in the dark and came upon a hole in the street she could not avoid, and that hitting the hole caused her body to jerk very hard to the point that she bit her tongue. The ALJ has misstated the claimant's testimony in this case regarding the manner in which the compensable injury is alleged to have occurred. We view the ALJ's misstatement of the evidence as a material misstatement of fact. While the ALJ can accept or reject in whole or in part the evidence regarding the claimed injury, her decision in this case is based upon an incorrect mechanism of injury and requires that we reverse her determination on the extent of the claimant's compensable injury. See Appeals Panel Decision (APD) 172522, decided December 6, 2017, and APD 210449, decided May 24, 2021. We reverse the ALJ's determination that the compensable injury of (date of injury), does not extend to a right shoulder rotator cuff tear, right coracohumeral sprain, or right shoulder impingement, and we remand the issue of whether the compensable injury of (date of injury), extends to a right shoulder rotator cuff tear, right coracohumeral sprain, or right shoulder impingement for further action consistent with this decision.

On remand the ALJ is to correct her misstatement of the evidence regarding the mechanism of the compensable injury. The ALJ shall consider all of the evidence and make findings of fact, conclusions of law, and a determination of whether the compensable injury of (date of injury), extends to a right shoulder rotator cuff tear, right coracohumeral sprain, or right shoulder impingement.

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 Texas Department of Insurance, Division of Workers' Compensation, 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 certified self-insured)**
and the name and address of its registered agent for service of process is

(NAME)
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

Carisa Space-Beam
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Margaret L. Turner
Appeals Judge