

APPEAL NO. 220237
FILED APRIL 6, 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 January 5, 2022, in (city), Texas, with (administrative law judge) presiding as the administrative law judge (ALJ). The ALJ resolved the disputed issue by deciding that: the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the first quarter (September 23, 2021, through December 22, 2021). The appellant (carrier) appealed the ALJ's determination. The claimant 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), which resulted in an impairment rating of 15% or higher, and that the qualifying period for the first quarter was from June 11, 2021, through September 9, 2021. We note that in Stipulation 1.G., the word "quarter" was mistakenly omitted. Therefore, we reform Stipulation 1.G. to read: During the qualifying period for the first quarter, the claimant was a resident of the county of (city), Texas. The claimant testified that on (date of injury), as a result of the compensable injury he lost his right index finger, and his right middle finger was successfully reattached.

The ALJ's decision and order states that the following exhibits were admitted into evidence: ALJ's Exhibit 1; Claimant's Exhibits 1 through 6; and Carrier's Exhibits A through J. However, in Claimant's Exhibit 3, page 94 is missing from the records that were admitted into evidence. Additionally, Claimant's Exhibit 6 is missing page 3 from the records that were admitted into evidence. Because the record at the CCH was incomplete, it must be remanded for the addition or reconstruction of the missing exhibits. See Appeals Panel Decision (APD) 030543, decided April 18, 2003.

Pursuant to Section 410.203(c), the Appeals Panel may not remand a case more than once. Given that we are remanding this case for reconstruction of the record, we have reviewed the audio recording of the January 5, 2022, CCH, the documentary evidence, the ALJ's decision, the appeal, and the response with regard to the issue in dispute.

The ALJ determined the claimant is entitled to SIBs for the first quarter. The ALJ stated in the discussion portion of the decision that the claimant "lost his complete index finger of his left hand and his middle finger of his left hand was amputated, but was

successfully surgically reattached.” She further stated that the claimant had surgery to his left wrist and that the claimant stated he still has loss of strength of his left wrist.

However, the claimant testified that the injury was to his right wrist and fingers, not his left wrist and fingers as stated by the ALJ. The ALJ has misstated the claimant’s testimony in this case regarding the nature of the claimant’s compensable injuries. 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 understanding of the injury and requires that we reverse her determination on entitlement to SIBs for the first quarter. See APD 172522, decided December 6, 2017, and APD 210449, decided May 24, 2021.

We remand the case to the ALJ for a reconstruction of the record and for the ALJ to correct her misstatement of the evidence regarding the nature 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 claimant is entitled to SIBs for the first quarter.

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 **AMERISURE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**ROBIN MILLER
5221 N. O'CONNOR BLVD., STE 400
IRVING, TEXAS 75039-3711.**

Cristina Beceiro
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge