

APPEAL NO. 220318
FILED APRIL 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 (CCH) was held on January 24, 2022, 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), extends to disc space at L4-5 which is minimally narrowed with desiccation, discogenic endplate changes, a broad-based central disc protrusion greater to the right midline that measures 11 mm in the thecal sac, and lumbar radiculopathy; (2) the respondent (claimant) has not yet reached maximum medical improvement (MMI); (3) because the claimant has not yet reached MMI an impairment rating (IR) cannot yet be assigned; and (4) the claimant had disability from November 25, 2020, through the date of the CCH. The appellant (self-insured) appealed the ALJ's determinations. The appeal file does not contain a response from the claimant to the self-insured's appeal.

DECISION

Affirmed in part and reformed by striking in part.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury), which extends to a lumbar strain.¹ The claimant was injured on (date of injury), while pulling up an approximately 175-pound manhole cover with a manhole puller.

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

The ALJ's determination that the compensable injury of (date of injury), extends to disc space at L4-5 which is minimally narrowed with desiccation, discogenic endplate changes, a broad-based central disc protrusion greater to the right midline that

¹ We note the ALJ incorrectly identified this condition as a lumbar sprain in one instance in her discussion.

measures 11 mm in the thecal sac, and lumbar radiculopathy is supported by sufficient evidence and is affirmed.

MMI/IR

The ALJ's determinations that the claimant has not yet reached MMI and because the claimant has not yet reached MMI an IR cannot yet be assigned are supported by sufficient evidence and are affirmed.

DISABILITY

The disability issue as agreed by the parties at the CCH was whether the claimant had disability from November 25, 2020, through December 19, 2021. The ALJ determined the claimant had disability from November 25, 2020, through the date of the CCH, which was January 24, 2022. That part of the ALJ's determination that the claimant had disability from November 25, 2020, through December 19, 2021, is supported by sufficient evidence and is affirmed. That part of the ALJ's determination that the claimant had disability from December 20, 2021, through the date of the CCH exceeds the scope of the disability issue. Accordingly, we reform the ALJ's decision by striking that portion of the ALJ's determination that the claimant had disability from December 20, 2021, through the date of the CCH as exceeding the scope of the disability issue.

SUMMARY

We affirm the ALJ's determination that the compensable injury of (date of injury), extends to disc space at L4-5 which is minimally narrowed with desiccation, discogenic endplate changes, a broad-based central disc protrusion greater to the right midline that measures 11 mm in the thecal sac, and lumbar radiculopathy.

We affirm the ALJ's determination that the claimant has not yet reached MMI.

We affirm the ALJ's determination that because the claimant has not yet reached MMI, an IR cannot yet be assigned.

We affirm that part of the ALJ's determination that the claimant had disability from November 25, 2020, through December 19, 2021.

We reform the ALJ's decision by striking that portion of the ALJ's determination that the claimant had disability from December 20, 2021, through the date of the CCH as exceeding the scope of the disability issue before the ALJ.

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), TX (ZIP CODE).

Carisa Space-Beam
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Margaret L. Turner
Appeals Judge