

APPEAL NO. 220521
FILED MAY 25, 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 February 9, 2022, with the record closing on March 11, 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 a lumbar sprain; (2) the compensable injury of (date of injury), does not extend to lumbar radiculopathy or lumbar disc herniation at L4-5; (3) the appellant (claimant) had disability from March 27, 2020, through October 14, 2021, resulting from an injury sustained on (date of injury); (4) the claimant reached maximum medical improvement (MMI) on March 26, 2020; and (5) the claimant's impairment rating (IR) is zero percent.

The claimant appealed, disputing the ALJ's determinations regarding extent of injury, disability, MMI, and IR. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed in part and reversed and remanded in part.

The parties stipulated, in part, that the Texas Department of Insurance, Division of Workers' Compensation (Division) appointed (Dr. F) as designated doctor to address MMI and IR and that the carrier has accepted liability for a lumbar strain. The claimant testified he was injured on (date of injury), while he and a co-worker were pulling a hose along with another co-worker.

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 extent-of-injury determination that the compensable injury of (date of injury), does not extend to lumbar radiculopathy or a lumbar disc herniation at L4-5 is supported by sufficient evidence and is affirmed.

The extent-of-injury issue contained in the Benefit Review Conference Report lists the following condition at issue: lumbar sprain. Both parties agreed at the CCH that a lumbar sprain was a part of the extent-of-injury issue to be resolved.

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 ALJ states in Conclusion of Law No. 3, the summary on page one, and the Decision portion of the decision and order that the compensable injury of (date of injury), extends to a lumbar sprain. However, the ALJ made no findings of fact whether the compensable injury extends to a lumbar sprain. Because the ALJ's decision contains no findings of fact regarding whether the compensable injury of (date of injury), extends to a lumbar sprain, which was an issue properly before the ALJ to resolve, it does not comply with Section 410.168 and Rule 142.16. We reverse the ALJ's determination that the compensable injury of (date of injury), extends to a lumbar sprain as being incomplete, and we remand the issue of whether the compensable injury of (date of injury), extends to a lumbar sprain. See Appeals Panel Decision (APD) 132339, decided December 12, 2013.

DISABILITY

Because we have reversed and remanded a portion of the extent-of-injury determination, we also reverse the ALJ's determination that the claimant had disability as a result of the compensable injury sustained on (date of injury), from March 27, 2020, through October 14, 2021, and remand the disability issue to the ALJ for further action consistent with this decision.

MMI/IR

Given that we have reversed a portion of the ALJ's extent-of-injury determination and remanded that issue to the ALJ to make a determination consistent with this decision, we reverse the ALJ's determination that the claimant reached MMI on March 26, 2020, and that the claimant's IR is zero percent, and we remand the issues of MMI and IR to the ALJ to make a determination consistent with this decision.

SUMMARY

We affirm that portion of the ALJ's extent-of-injury determination that the compensable injury of (date of injury), does not extend to lumbar radiculopathy or a lumbar disc herniation at L4-5.

We reverse that portion of the ALJ's extent-of-injury determination that the compensable injury of (date of injury), extends to a lumbar sprain and we remand the issue of whether the compensable injury of (date of injury), extends to a lumbar sprain for further action consistent with this decision.

We reverse the ALJ's determination that the claimant had disability as a result of the compensable injury sustained on (date of injury), from March 27, 2020, through October 14, 2021, and remand the disability issue to the ALJ for further action consistent with this decision.

We reverse the ALJ's determination that the claimant reached MMI on March 26, 2020, and remand the MMI issue to the ALJ for further action consistent with this decision.

We reverse the ALJ's determination that the claimant's IR is zero percent and remand the IR issue to the ALJ for further action consistent with this decision.

REMAND INSTRUCTIONS

On remand the ALJ is to consider all of the evidence, make findings of fact, and render conclusions of law and a decision regarding the issues of whether the compensable injury of (date of injury), extends to a lumbar sprain; the claimant's date of MMI, and the claimant's IR; and whether the claimant had disability from March 27, 2020, through October 14, 2021, resulting from an injury sustained on (date of 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 **ACE AMERICAN INSURANCE COMPANY** 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.**

Margaret L. Turner
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Carisa Space-Beam
Appeals Judge