

APPEAL NO. 220569  
FILED MAY 18, 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 March 7, 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), does not extend to lesion of the saphenous and medial plantar cutaneous nerve, swelling of the left foot, ankle, or calf, or altered gait; (2) the date of maximum medical improvement (MMI) is December 19, 2019; (3) the appellant's (claimant) impairment rating (IR) is zero percent; and (4) the claimant did not have disability from December 19, 2019, through the date of the CCH resulting from an injury sustained on (date of injury). The claimant appealed, disputing the ALJ's determinations. The respondent (carrier) responded, urging affirmance of the ALJ's determinations.

DECISION

Affirmed in part, reversed by striking in part, and reversed and remanded in part.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury); the carrier has accepted a left foot puncture wound with foreign body as the compensable injury; and the statutory date of MMI is July 14, 2021. The claimant was injured on (date of injury), when a metal rod went through his left foot while working on a scaffold.

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 determination that the compensable injury of (date of injury), does not extend to lesion of the saphenous and medial plantar cutaneous nerve, swelling of the left foot and ankle, or altered gait is supported by sufficient evidence and is affirmed.

At the CCH the ALJ stated the extent-of-injury issue as follows: does the compensable injury of (date of injury), extend to a lesion of the sciatic nerve lower limb, neuralgia and neuritis unspecified, traumatic arthropathy of the left ankle and foot, lesion of the saphenous nerve and medial plantar cutaneous nerve, swelling of the left foot/ankle, altered gait, and pain in the left foot? The parties agreed at the CCH that this was the correct extent-of-injury issue to be litigated. However, the ALJ made findings of fact, conclusions of law, and a decision regarding only lesion of the saphenous and medial plantar cutaneous nerve, swelling of the left foot and ankle, and altered gait. The ALJ did not make findings of fact, conclusions of law, or a decision regarding lesion of the sciatic nerve lower limb, neuralgia and neuritis unspecified, traumatic arthropathy of the left ankle and foot, and pain in the left foot.

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 a 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 failed to make findings of fact, conclusions of law, and a decision regarding the disputed conditions of lesion of the sciatic nerve lower limb, neuralgia and neuritis unspecified, traumatic arthropathy of the left ankle and foot, or pain in the left foot in this case and as required by Section 410.168 and Rule 142.16. See Appeals Panel Decision (APD) 132339, decided December 12, 2013; APD 150510, decided April 21, 2015; APD 162262, decided January 10, 2017; APD 181349, decided August 15, 2018; and APD 210332, decided May 3, 2021. Accordingly, we reverse the ALJ's decision as being incomplete and we remand the issue of whether the compensable injury extends to those conditions.

Additionally, we note the ALJ determined that the compensable injury does not extend to swelling of the left calf, which was not one of the disputed conditions agreed to by the parties at the CCH. We therefore reverse the ALJ's decision by striking her determination that the compensable injury does not extend to swelling of the left calf as exceeding the scope of the extent-of-injury issue.

### **MMI/IR AND DISABILITY**

We have reversed and remanded and reversed by striking portions of the ALJ's extent-of-injury determination. We therefore reverse the ALJ's determinations that the claimant reached MMI on December 19, 2019, with a zero percent IR and that the claimant did not have disability from December 19, 2019, through the date of the CCH resulting from an injury sustained on (date of injury). We remand the issues of MMI, IR, and whether the claimant had disability from December 19, 2019, through the date of

the CCH resulting from an injury sustained on (date of injury), to the ALJ for further action consistent with this decision.

## **SUMMARY**

We affirm that portion of the ALJ's determination that the compensable injury of (date of injury), does not extend to lesion of the saphenous and medial plantar cutaneous nerve, swelling of the left foot and ankle, or altered gait.

We reverse the ALJ's extent-of-injury determination as incomplete, and remand the issue of whether the (date of injury), compensable injury extends to lesion of the sciatic nerve lower limb, neuralgia and neuritis unspecified, traumatic arthropathy of the left ankle and foot, and pain in the left foot for further action consistent with this decision.

We reverse and strike that portion of the ALJ's determination that the compensable injury does not extend to swelling of the left calf as exceeding the scope of the extent-of-injury issue.

We reverse the ALJ's determination that the claimant reached MMI on December 19, 2019, and we remand the issue of MMI 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 we remand the issue of IR to the ALJ for further action consistent with this decision.

We reverse the ALJ's determination that the claimant did not have disability from December 19, 2019, through the date of the CCH resulting from an injury sustained on (date of injury), and we remand this issue to the ALJ for further action consistent with this decision.

## **REMAND INSTRUCTIONS**

The ALJ is to make findings of fact, conclusions of law, and a determination whether the compensable injury of (date of injury), extends to a lesion of the sciatic nerve lower limb, neuralgia and neuritis unspecified, traumatic arthropathy of the left ankle and foot, and pain in the left foot that is consistent and supported by the evidence.

The ALJ is then to determine when the claimant reached MMI and the claimant's IR. The ALJ is also to determine whether the claimant had disability from December 19, 2019, through the date of the CCH 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 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 **INDEMNITY INSURANCE COMPANY OF NORTH AMERICA** 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.**

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Carisa Space-Beam  
Appeals Judge

CONCUR:

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Cristina Beceiro  
Appeals Judge

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Margaret L. Turner  
Appeals Judge