

APPEAL NO. 220754  
FILED JUNE 22, 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 21, 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 a left knee sprain or aggravation of left knee medial compartment osteoarthritis; (2) the respondent (claimant) reached maximum medical improvement (MMI) on September 18, 2020; (3) the claimant's impairment rating (IR) is zero percent; (4) the claimant had good cause for failing to go to the required medical examination (RME) on August 26, 2021; and (5) the claimant is entitled to temporary income benefits (TIBs) from August 26, 2021, through the date of the CCH.

The appellant (carrier) appealed the ALJ's determinations that the claimant had good cause for failing to go to the RME on August 26, 2021, and that the claimant is entitled to TIBs from August 26, 2021, through the date of the CCH. The claimant responded, urging affirmance of those determinations. The ALJ's extent of injury, MMI, and IR determinations were not appealed and have become final pursuant to Section 410.169.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated, in part, that the claimant sustained a compensable injury in the form of at least a left knee contusion on (date of injury), and the statutory date of MMI is December 9, 2021. The claimant was injured on (date of injury), when she tripped over a hose and fell on her left leg.

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).

The ALJ's determination that the claimant had good cause for failing to go to the RME on August 26, 2021, is supported by sufficient evidence and is affirmed.

The carrier contends on appeal that the ALJ erred in determining the claimant is entitled to TIBs from August 26, 2021, through the date of the CCH because the claimant reached MMI on September 18, 2020. Section 408.101(a) provides that an employee is entitled to TIBs if the employee has a disability and has not attained MMI. Section 408.102(a) provides TIBs continue until the employee reaches MMI. As previously noted, the ALJ's determination that the claimant reached MMI on September 18, 2020, was not appealed and has become final. Accordingly, it was error for the ALJ to determine that the claimant is entitled to TIBs from August 26, 2021, through the date of the CCH. See Appeals Panel Decision 181731, decided September 10, 2018. We therefore reverse the ALJ's determination that the claimant is entitled to TIBs from August 26, 2021, through the date of the CCH, and render a new decision that the claimant is not entitled to TIBs from August 26, 2021, through the date of the CCH, because she was determined to have reached MMI on September 18, 2020.

### **SUMMARY**

We affirm the ALJ's determination that the claimant had good cause for failing to go to the RME on August 26, 2021.

We reverse the ALJ's determination that the claimant is entitled to TIBs from August 26, 2021, through the date of the CCH, and render a new decision that the claimant is not entitled to TIBs from August 26, 2021, through the date of the CCH.

The true corporate name of the insurance carrier is **BERKSHIRE HATHAWAY HOMESTATE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY d/b/a CSC-LAWYERS  
211 EAST 7TH STREET, SUITE 620  
AUSTIN, TEXAS 78701-3218.**

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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