

APPEAL NO. 220761  
FILED JUNE 23, 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 December 10, 2020, and March 16, 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 central and left-sided disc herniation at C4-5, central and left-sided disc herniation at C5-6, bilateral tarsal tunnel syndrome, C6 radiculopathy, bilateral cervical radiculopathy left greater than right at C6, or bilateral plantar fibromatosis; (2) the appellant (claimant) reached maximum medical improvement (MMI) on February 17, 2020; and (3) the claimant's impairment rating (IR) is 10%. The claimant appealed, disputing the ALJ's determinations of extent of injury, MMI, and IR. The respondent (carrier) responded, urging affirmance of the disputed determinations.

DECISION

Affirmed in part, reversed and rendered in part, and reversed and remanded in part.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury), in the form of a cervical sprain/strain, lumbar sprain/strain, and right ankle sprain/strain; the Texas Department of Insurance, Division of Workers' Compensation (Division) initially appointed (Dr. G) as the designated doctor to address extent of injury, MMI, and IR; the Division then appointed (Dr. R) to address extent of injury; finally, the Division appointed (Dr. C) to address extent of injury, MMI, and IR; and the date of statutory MMI is February 24, 2020. Although the ALJ did not incorporate it into the decision, we note that the parties additionally stipulated on the record that the claimant reached MMI on February 17, 2020, with a 10% IR. The claimant, who was a training supervisor for (employer), was injured on (date of injury), while trying to clear a jam of boxes in a chute. The claimant climbed up the chute and released the jammed boxes which then fell on her. She proceeded to flip onto her back and slide down the chute with her arms outstretched. Her boots got stuck in the conveyor belt and boxes continued to fall on her until she was able to free herself. We note that Carrier's Exhibit E was withdrawn by the carrier during the CCH but was not omitted in the Evidence Presented section of the decision.

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 central and left-sided disc herniation at C4-5, bilateral tarsal tunnel syndrome, C6 radiculopathy, bilateral cervical radiculopathy left greater than right at C6, or bilateral plantar fibromatosis is supported by sufficient evidence and is affirmed.

The extent-of-injury issue reported in the Benefit Review Conference Report is as follows:

Does the compensable injury of (date of injury), extend to central and left sided disc herniation at C4-5, central and right sided disc herniation at C5-6, facet arthropathy at L4-5, central herniation with posterior annular tear at L5-S1, bilateral legs radiculopathy, bilateral arms radiculopathy, bilateral plantar fasciitis, lumbago with sciatica, neck pain, bilateral lower extremity paraesthesia, bilateral upper extremity paraesthesia, chronic progressive neuropathy bilateral upper extremity, chronic progressive neuropathy bilateral lower extremity, and narrowing of the spinal cervical canal?

At the CCH on March 16, 2022, the parties agreed on the record to modify the extent-of-injury issue as follows:

Does the compensable injury of (date of injury), extend to central and left-sided disc herniation at C4-5, central and right-sided disc herniation at C5-6, bilateral tarsal tunnel syndrome, C6 radiculopathy, bilateral cervical radiculopathy left greater than right at C6, and bilateral plantar fibromatosis?

In her decision and order, the ALJ mistakenly listed the second condition as central and left-sided disc herniation at C5-6. The parties did not agree to add or litigate the extent-of-injury condition of central and left-sided disc herniation at C5-6. The ALJ exceeded the scope of the disputed extent-of-injury issue before her. See Appeals Panel Decision (APD) 181285, decided July 26, 2018. Accordingly, we reverse the extent-of-injury determination and render a new decision by striking the condition of central and left-sided disc herniation at C5-6.

Additionally, the ALJ failed to make a determination on the certified condition of central and right-sided disc herniation at C5-6 which was a disputed condition before her to determine. Accordingly, we reverse the extent-of-injury issue as being incomplete and remand to the ALJ to decide whether or not the compensable injury of (date of injury), extends to central and right-sided disc herniation at C5-6.

### **MMI/IR**

Section 410.166 and 28 Tex. Admin. Code § 147.4(c) (Rule 147.4(c)) provide, in part, that an oral agreement of the parties that is preserved in the record is final and binding on the date made. As noted above, the parties stipulated at the March 16, 2022, CCH that the claimant reached MMI on February 17, 2020, with a 10% IR in accordance with the certifications of Dr. C. Under the facts of this case, the ALJ's determination that the claimant reached MMI on February 17, 2020, with a 10% IR is supported by sufficient evidence and is affirmed.

### **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 central and left-sided disc herniation at C4-5, bilateral tarsal tunnel syndrome, C6 radiculopathy, bilateral cervical radiculopathy left greater than right at C6, or bilateral plantar fibromatosis.

We reverse that portion of the ALJ's extent-of-injury determination that the compensable injury of (date of injury), does not extend to central and left-sided disc herniation at C5-6 as exceeding the scope of the extent-of-injury issue and render a new decision by striking the ALJ's determination that the compensable injury of (date of injury), does not extend to central and left-sided disc herniation at C5-6.

We reverse the ALJ's extent-of-injury determination as being incomplete and remand to the ALJ to determine whether the compensable injury of (date of injury), extends to central and right-sided disc herniation at C5-6.

We affirm the ALJ's determination that the claimant reached MMI on February 17, 2020, with a 10% IR.

### **REMAND INSTRUCTIONS**

On remand the ALJ is to make a determination of whether the compensable injury of (date of injury), extends to central and right-sided disc herniation at C5-6.

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 **LM INSURANCE CORPORATION** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
211 EAST 7TH STREET, SUITE 620  
AUSTIN, TEXAS 78701-3218.**

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Cristina Beceiro  
Appeals Judge

CONCUR:

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Carisa Space-Beam  
Appeals Judge

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Margaret L. Turner  
Appeals Judge