

APPEAL NO. 221447
FILED OCTOBER 13, 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 June 6, 2022, with the record closing on July 27, 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 respondent (claimant) reached maximum medical improvement (MMI) on February 7, 2022; and (2) the claimant's impairment rating (IR) is seven percent. The appellant (carrier) appealed the ALJ's determinations. The claimant responded, urging affirmance of the ALJ's determinations.

DECISION

Reversed and remanded.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury), that consists of a left shoulder sprain and left shoulder rotator cuff tear; the Texas Department of Insurance, Division of Workers' Compensation (Division) appointed (Dr. H) as the designated doctor to determine the issues of MMI, IR, and return to work; and the date of statutory MMI is June 5, 2022. The claimant was injured on (date of injury), while moving wheel stands.

The decision reflects the following exhibits were admitted: Claimant's Exhibits 1-4; Carrier's Exhibits A-F; and ALJ's Exhibits 1-3. The ALJ noted in her decision that a Presiding Officer's Directive (POD) to order a designated doctor examination was sent after the CCH to inform the designated doctor the date of statutory MMI and requested a certification considering that date. The ALJ further noted that Dr. H sent a response, which was admitted as ALJ Exhibit 3, and that "all parties were given time to respond to the report." The ALJ also stated the record closed on July 27, 2022. Although both the POD dated June 8, 2022, and Dr. H's response and certification dated July 6, 2022, are in evidence, no further post-CCH evidence is in the file provided for review.

The carrier contends on appeal that it timely submitted Carrier's Exhibit G, which is a peer review report from (Dr. Hd) dated July 25, 2022, and closing remarks. The carrier attached to its appeal a Dispute Resolution Information System (DRIS) note dated July 28, 2022, from a Division employee. This DRIS note states that a response was received from the carrier's attorney with a copy of Dr. Hd's July 25, 2022, peer review report, and that "the parties responded before the deadline expired on [July 26, 2022] at [5:00 p.m.]," and "the [ALJ] closed the CCH record on [July 27, 2022]."

The carrier timely submitted the additional documentary evidence to the Division prior to the closing of the record on July 27, 2022. The ALJ's decision does not indicate that Carrier's Exhibit G was received or admitted as an exhibit. Accordingly, we reverse the ALJ's determinations and remand the issues to the ALJ for further consideration of all the evidence and for further proceedings consistent with this decision.

Pursuant to Section 410.203(c), the Appeals Panel may not remand a case more than once. Given that we are remanding this case to the ALJ, we note there appears to be pages missing from the claimant's exhibits. The claimant's exhibit list states that Claimant's Exhibit 3 contains 105 pages. However, the record reflects that pages 5, 36, and a portion of page 105 are missing from Claimant's Exhibit 3.

SUMMARY

We reverse the ALJ's determination that the claimant reached MMI on February 7, 2022, and we remand this issue to the ALJ for further action consistent with this decision.

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

REMAND INSTRUCTIONS

On remand the ALJ is to reconstruct the record regarding the missing pages in Claimant's Exhibit 3. The ALJ is also to consider Dr. Hd's peer review report and the carrier's closing remarks and allow the parties an opportunity to respond. The ALJ is to then make a determination of the date the claimant reached MMI and the claimant's IR.

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 Appeals Panel Decision 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **ARCH INDEMNITY INSURANCE COMPANY** 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.**

Carisa Space-Beam
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Margaret L. Turner
Appeals Judge