

APPEAL NO. 221481  
FILED NOVEMBER 1, 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 July 28, 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 right wrist carpal tunnel syndrome (CTS) or right triangular fibrocartilage complex (TFCC) tear; (2) the first certification of maximum medical improvement (MMI) and assigned impairment rating (IR) from (Dr. F) on June 19, 2019, became final pursuant to Section 408.123 and 28 Tex. Admin. Code § 130.12 (Rule 130.12); (3) the date of MMI is June 4, 2019; and (4) the appellant's (claimant) IR is seven percent. The claimant appealed, disputing the ALJ's determinations. The claimant additionally appeals an evidentiary ruling made by the ALJ excluding a letter of causation because it was not timely exchanged. The respondent (self-insured) responded, urging affirmance of the ALJ's determinations.

**DECISION**

Affirmed 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 right hand sprain and right wrist sprain; the Texas Department of Insurance, Division of Workers' Compensation (Division) appointed Dr. F as designated doctor to address MMI and IR; and the statutory date of MMI is April 6, 2021. The claimant was injured on (date of injury), while using a drill to assemble parts.

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).

**EVIDENTIARY RULING**

At the CCH the self-insured objected to the admission of a letter of causation from (Dr. O), the claimant's treating doctor, on the grounds that the report had not been timely exchanged. To obtain a reversal of a judgment based on the ALJ's abuse of discretion in the admission or exclusion of evidence, an appellant must first show the

admission or exclusion was in fact an abuse of discretion, and also that the error was reasonably calculated to cause and probably did cause the rendition of an improper judgment. *Hernandez v. Hernandez*, 611 S.W.2d 732 (Tex. Civ. App.—San Antonio 1981, no writ). In determining whether there has been an abuse of discretion, the Appeals Panel looks to see whether the ALJ acted without reference to any guiding rules or principles. Appeals Panel Decision (APD) 043000, decided January 12, 2005; *Morrow v. H.E.B., Inc.*, 714 S.W.2d 297 (Tex.1986).

Rule 142.13(c)(1) provides, in part, that the parties exchange documentary evidence “no later than 15 days after the benefit review conference [BRC].” Rule 142.13(c)(2) further provides that “[t]hereafter, parties shall exchange additional documentary evidence as it becomes available.” Rule 142.13(c)(3) provides, in part, that the ALJ shall make a determination whether good cause exists for a party not having previously exchanged such information or documents to introduce such evidence at the hearing. A party who belatedly investigates the facts and then does not disclose known information in order to make further investigation and development runs the risk of having evidence excluded for failure of exchange. See APD 991744, decided October 1, 1999.

In this case, the BRC was held on February 16, 2022. The exhibit in question, a report from Dr. O, labeled “Causation Letter,” is dated May 30, 2022. The self-insured contended that the exhibit in question was not exchanged until the day of the CCH. The ALJ noted that there had been two prior settings for the CCH in April and June of 2022 that were rescheduled. The ALJ stated on the record that she did not find good cause for the late exchange of the exhibit. We find no abuse of discretion in the ALJ's application of the exchange of evidence rules and perceive no reversible error in the evidentiary ruling that the claimant did not have good cause for failing to timely exchange the report.

### **FINALITY**

The ALJ's determination that the first certification of MMI and assigned IR from Dr. F on June 19, 2019, became final under Section 408.123 and Rule 130.12 is supported by sufficient evidence and is affirmed.

### **MMI/IR**

The ALJ's determinations that the claimant reached MMI on June 4, 2019, and the claimant's IR is seven percent are supported by sufficient evidence and are affirmed.

### **EXTENT OF INJURY**

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. 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 extent-of-injury issue as stated on the BRC Report and as agreed to by the parties at the CCH was whether the compensable injury of (date of injury), extends to right wrist CTS and right TFCC tear. Although Conclusion of Law No. 3 and the decision state that the compensable injury of (date of injury), does not extend to right wrist CTS and right TFCC tear, the ALJ made no specific finding of fact regarding the compensability of the disputed conditions as required by Section 410.168 and Rule 142.16. See APD 132339, decided December 12, 2013; APD 150510, decided April 21, 2015; APD 162262, decided January 10, 2017; and APD 181349, decided August 15, 2018.

Accordingly, we reverse the ALJ's determination that the compensable injury of (date of injury), does not extend to right wrist CTS and right TFCC tear, and we remand the issue of whether the compensable injury of (date of injury), extends to right wrist CTS and right TFCC tear to the ALJ to make findings of fact on that issue.

### **SUMMARY**

We affirm the ALJ's determination that the first certification of MMI and assigned IR from Dr. F on June 19, 2019, became final under Section 408.123 and Rule 130.12.

We affirm the ALJ's determination that the claimant reached MMI on June 4, 2019.

We affirm the ALJ's determination that the claimant's IR is seven percent.

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 right wrist CTS and right TFCC tear 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 right wrist CTS and right TFCC tear that is supported by the evidence.

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 **GENERAL MOTORS L.L.C. (a certified self-insured)**, 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.**

---

Margaret L. Turner  
Appeals Judge

CONCUR:

---

Cristina Beceiro  
Appeals Judge

---

Carisa Space-Beam  
Appeals Judge