

APPEAL NO. 221544
FILED NOVEMBER 16, 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 August 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 a disc protrusion at L2-3, disc bulge and protrusion at C3-4, or disc bulge and anterolisthesis at C7-T1; (2) the appellant (claimant) reached maximum medical improvement (MMI) on October 4, 2021; and (3) the claimant's impairment rating (IR) is 14%. The claimant appealed, disputing the ALJ's determinations. The respondent (carrier) responded, urging affirmance of the ALJ's determinations.

DECISION

Reformed by striking in part, 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 at least a lumbar strain, cervical strain, bilateral shoulder strain, and bilateral knee strain. We note the stipulation in Finding of Fact No. 1.D. states the compensable injury is also a left shoulder strain. The parties stipulated to bilateral shoulder strain, not a left shoulder strain, and that condition is necessarily included in bilateral shoulder strain. We reform Finding of Fact No. 1.D. to strike "left shoulder strain" from the parties' stipulation.

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 does not extend to a disc protrusion at L2-3, disc bulge and protrusion at C3-4, or disc bulge and anterolisthesis at C7-T1 is supported by sufficient evidence and is affirmed.

The claimant contends on appeal that the ALJ failed to make determinations regarding the compensability of a disc bulge and protrusion at L3-4. In its response the carrier agrees the ALJ failed to address a disc bulge and protrusion at L3-4.

In evidence is the Benefit Review Conference (BRC) report dated June 30, 2022. The BRC report reflects the following conditions were included in the extent-of-injury issue: disc protrusion at L2-3, disc bulge and protrusion at L3-4, disc bulge and protrusion at C3-4, and disc bulge and anterolisthesis at C7-T1. The extent-of-injury issue statement on the decision and order omits a disc bulge and protrusion at L3-4. At the CCH the ALJ read the extent-of-injury issue as reflected on the decision and order and did not address a disc bulge and protrusion at L3-4. The parties agreed to the issue statement as read by the ALJ and reflected in the decision and order, both of which omit a disc bulge and protrusion at L3-4. However, a review of the record reflects that the parties actually litigated the compensability of a disc bulge and protrusion at L3-4. The ALJ failed to make any findings of fact, conclusions of law, or a decision regarding that condition. We therefore reverse the ALJ's extent-of-injury determination as being incomplete, and we remand the issue of whether the compensable injury extends to a disc bulge and protrusion at L3-4 to the ALJ for further action consistent with this decision.

MMI/IR

Because we have remanded a portion of the extent-of-injury determination, we also reverse the ALJ's determinations that the claimant reached MMI on October 4, 2021, with a 14% IR, and we remand the issues of MMI and IR to the ALJ for further action consistent with this decision.

Pursuant to Section 410.203(c), the Appeals Panel may not remand a case more than once. Because we are remanding this case to the ALJ, we note that (Dr. W) 14% IR adopted by the ALJ contains a mathematical error. Dr. W, the designated doctor appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division), examined the claimant on December 13, 2021, and again on April 12, 2022. Those certifications in which Dr. W assigned a 14% IR certify an MMI date of October 4, 2021, and are based on various conditions and the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000) (AMA Guides). In both of his narrative reports attached to his certifications, Dr. W noted he used range of motion measurements taken by (Dr. C) on October 7, 2021, to assign the 14% IR. Dr. W's 14% IR included a 4% whole person impairment for "-4[°] extension" for the claimant's left knee. However, Table 41, Knee Impairments,

on page 3/78 of the AMA Guides does not provide any impairment for -4° knee extension.

SUMMARY

We reform Finding of Fact No. 1.D. by striking “left shoulder strain” from the parties’ stipulation.

We affirm that portion of the ALJ’s determination that the compensable injury of (date of injury), does not extend to a disc protrusion at L2-3, disc bulge and protrusion at C3-4, or disc bulge and anterolisthesis at C7-T1.

We reverse the ALJ’s extent-of-injury determination as being incomplete, and we remand the issue of whether the compensable injury of (date of injury), extends to a disc bulge and protrusion at L3-4 to the ALJ for further action consistent with this decision.

We reverse the ALJ’s determination that the claimant reached MMI on October 4, 2021, and we remand the MMI issue to the ALJ for further action consistent with this decision.

We reverse the ALJ’s determination that the claimant’s IR is 14%, and we remand the IR issue to the ALJ for further action consistent with this decision.

REMAND INSTRUCTIONS

On remand 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 disc bulge and protrusion at L3-4, the claimant’s date of MMI, and the claimant’s IR.

Dr. W is the designated doctor. The ALJ is to determine whether Dr. W is still qualified and available to be the designated doctor. If Dr. W is no longer qualified or available to serve as the designated doctor, then another designated doctor is to be appointed pursuant to Division rules to opine on the issues of MMI and IR. The ALJ is to inform the designated doctor what conditions are included in the compensable injury. The ALJ is to request that the designated doctor give an opinion on the claimant’s date of MMI and rate the entire compensable injury in accordance with the AMA Guides considering the medical record and the certifying examination. If Dr. W is still qualified and available, the ALJ is to inform him of the mathematical error made in his 14% 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 **PHOENIX INSURANCE COMPANY, A SUBSIDIARY OF THE TRAVELERS INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

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

Carisa Space-Beam
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Margaret L. Turner
Appeals Judge