

APPEAL NO. 221546
FILED NOVEMBER 10, 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 was held on August 15, 2022, in (city), Texas, with (administrative law judge) presiding as the administrative law judge (ALJ). The ALJ resolved the sole disputed issue by deciding that the appellant (claimant) did not sustain a compensable injury on (date of injury). The claimant appealed the ALJ's determination. The respondent (carrier) responded, urging affirmance of the ALJ's determination.

DECISION

Reversed and remanded.

The claimant testified he was injured on (date of injury), when he stepped on a piece of metal that pierced his work boot and punctured his left foot. The claimant also testified he did not feel anything at the time he stepped on the metal and noticed the injury when he got home and removed his boot.

The ALJ noted in her discussion that the claimant testified he punctured his left foot. The ALJ, in discussing various medical records in evidence, noted complaints of a left foot injury, and that the claimant had been diagnosed with left foot necrotizing fasciitis and cellulitis of the left foot. However, the ALJ also stated the claimant sought treatment on September 30, 2021, at (clinic), complaining of "pain and swelling of his right foot after it was punctured by a piece of metal 'yesterday afternoon.'" The ALJ noted the following:

A careful review of all the evidence presented revealed numerous inconsistencies in the medical records, [the] [c]laimant's testimony, and the recorded statements of witnesses. These inconsistencies could not be resolved in [the] [c]laimant's favor.

The claimant points out on appeal that the medical records reflect a left foot injury, not a right foot injury as stated by the ALJ, and that the ALJ's statement is an "untrue and an inaccurate reading of the medical records. . . ." In evidence are medical records from (clinic) dated September 30, 2021, which state the claimant was "complaining of pain in [the] left foot plant after [he] got a pucture (sic) with a piece of metal yesterday afternoon. . . ." The records from (Clinic) do not discuss the right foot.

While the ALJ can accept or reject in whole or in part the evidence regarding the claimed injury, her decision in this case is based, in part, upon a misstatement of the

medical evidence in the record. Accordingly, we reverse the ALJ's determination that the claimant did not sustain a compensable injury on (date of injury), and we remand the issue of compensability to the ALJ for further action consistent with this decision.

REMAND INSTRUCTIONS

On remand the ALJ is to correct her misstatement regarding the medical records in evidence. The ALJ shall consider all of the evidence and make a determination of whether the claimant sustained a compensable injury on (date of injury), that is consistent with 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 Texas Department of Insurance, Division of Workers' Compensation, 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 **NATIONAL FIRE INSURANCE COMPANY OF HARTFORD** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
1999 BRYAN STREET, SUITE 900
DALLAS, TEXAS 75201-3136.**

Carisa Space-Beam
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Margaret L. Turner
Appeals Judge