

APPEAL NO. 221902
FILED JANUARY 20, 2023

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 October 31, 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 L3-4 fluid in the facet joints and a left foraminal disc protrusion/herniation measuring 4.5 mm producing moderate left neural foramen stenosis touching the L3 nerve root; L4-5 fluid in the facet joints and a left foraminal disc protrusion/herniation measuring 2.5 mm; L5-S1 fluid in the facet joints with a circumferential disc bulge measuring 6 mm and a superimposed central disc protrusion/herniation measuring 8 mm producing moderate central canal stenosis; severe stenosis of the bilateral lateral recesses impinging the bilateral L5 nerve roots; somatic dysfunction of the sacroiliac joint; sacroccygeal disorder; peripheral radiculopathy; or facet arthropathy; (2) the appellant (claimant) reached maximum medical improvement (MMI) on March 26, 2021; (3) the claimant's impairment rating (IR) is five percent; and (4) the claimant had disability beginning on March 27, 2021, and continuing through April 29, 2021, but not thereafter through the date of the CCH.

The claimant appealed the ALJ's disability determination that was adverse to him, as well as the ALJ's extent of injury, MMI, and IR determinations. The respondent (carrier) responded, urging affirmance of the appealed determinations. The ALJ's determination that the claimant had disability beginning on March 27, 2021, and continuing through April 29, 2021, was not appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed in part, affirmed as reformed in part, reversed by striking in part, and reversed and remanded in part.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury), and that the carrier has accepted a back contusion, left hip contusion, and a grade I cervical sprain/strain as the compensable injury. The claimant was injured on (date of injury), when he slipped and fell on ice while working outdoors in below freezing weather.

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 L3-4 fluid in the facet joints; L4-5 fluid in the facet joints and a left foraminal disc protrusion/herniation measuring 2.5 mm; L5-S1 fluid in the facet joints with a circumferential disc bulge measuring 6 mm and a superimposed central disc protrusion/herniation measuring 8 mm producing moderate central canal stenosis; somatic dysfunction of the sacroiliac joint; peripheral radiculopathy; or facet arthropathy is supported by sufficient evidence and is affirmed. We note that the decision and order mistakenly cites sacrococcygeal disorder as sacrococcygeal disorder. We reform all references of sacrococcygeal disorder to read sacrococcygeal disorder. The ALJ's determination that the compensable injury of (date of injury), does not extend to sacrococcygeal disorder, as reformed, is supported by sufficient evidence and is affirmed.

At the CCH the parties agreed to amend the extent-of-injury issue to determine the following conditions: L3-4 fluid in the facet joints and a left foraminal disc protrusion/herniation measuring 4.5 mm producing moderate left neural foramen stenosis touching the left L3 nerve root; L4-5 fluid in the facet joints and a left foraminal disc protrusion/herniation measuring 2.5 mm; L5-S1 fluid in the facet joints with a circumferential disc bulge measuring 6 mm and a superimposed central disc protrusion/herniation measuring 8 mm producing moderate central canal stenosis, severe stenosis of the bilateral lateral recesses impinging the bilateral S1 nerve roots and severe bilateral neural foramen stenosis impinging the bilateral L5 nerve roots; somatic dysfunction of the sacroiliac joint; sacrococcygeal disorder; peripheral radiculopathy; and facet arthropathy.

The ALJ determined the compensable injury does not extend to severe stenosis of the bilateral lateral recesses impinging the bilateral L5 nerve roots rather than bilateral S1 nerve roots. The ALJ also determined the compensable injury does not extend to an L3-4 left foraminal disc protrusion/herniation measuring 4.5 mm producing moderate left neural foramen stenosis touching the L3 nerve root, rather than the left L3 nerve root. These determinations exceed the scope of the extent-of-injury determination before the ALJ. Accordingly, we reverse the ALJ's determinations that the compensable injury of (date of injury), does not extend to severe stenosis of the bilateral lateral recesses impinging the bilateral L5 nerve roots or an L3-4 left foraminal disc protrusion/herniation measuring 4.5 mm producing moderate left neural foramen stenosis touching the L3 nerve root, and we

strike those determinations as exceeding the scope of the extent-of-injury issue before the ALJ.

The ALJ failed to make findings of fact, conclusions of law, and a determination whether the compensable injury extends to L5-S1 severe stenosis of the bilateral lateral recesses impinging the bilateral S1 nerve roots, L5-S1 severe bilateral neural foramen stenosis impinging the bilateral L5 nerve roots, and an L3-4 left foraminal disc protrusion/herniation measuring 4.5 mm producing moderate left neural foramen stenosis touching the left L3 nerve root, which were issues properly before the ALJ to determine. We therefore reverse the ALJ's extent-of-injury determination as being incomplete. We remand the issue of whether the compensable injury of (date of injury), extends to L5-S1 severe stenosis of the bilateral lateral recesses impinging the bilateral S1 nerve roots, L5-S1 severe bilateral neural foramen stenosis impinging the bilateral L5 nerve roots, and an L3-4 left foraminal disc protrusion/herniation measuring 4.5 mm producing moderate left neural foramen stenosis touching the left L3 nerve root to the ALJ for further action consistent with this decision.

MMI/IR/DISABILITY

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 March 26, 2021, that the claimant's IR is five percent, and that the claimant did not have disability from April 30, 2021, through the date of the CCH. We remand these issues to the ALJ for further action consistent with this decision.

SUMMARY

We affirm that portion of the ALJ's determination that the compensable injury of (date of injury), does not extend to L3-4 fluid in the facet joints; L4-5 fluid in the facet joints and a left foraminal disc protrusion/herniation measuring 2.5 mm; L5-S1 fluid in the facet joints with a circumferential disc bulge measuring 6 mm and a superimposed central disc protrusion/herniation measuring 8 mm producing moderate central canal stenosis; somatic dysfunction of the sacroiliac joint; peripheral radiculopathy; or facet arthropathy.

We affirm as reformed the ALJ's determination that the compensable injury of (date of injury), does not extend to sacrococcygeal disorder.

We reverse that portion of the ALJ's determination that the compensable injury of (date of injury), does not extend to severe stenosis of the bilateral lateral recesses impinging the bilateral L5 nerve roots or an L3-4 left foraminal disc protrusion/herniation measuring 4.5 mm producing moderate left neural foramen stenosis touching the L3 nerve

root, and we strike those determinations as exceeding the scope of the extent-of-injury issue before the ALJ.

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 L5-S1 severe stenosis of the bilateral lateral recesses impinging the bilateral S1 nerve roots, L5-S1 severe bilateral neural foramen stenosis impinging the bilateral L5 nerve roots, and an L3-4 left foraminal disc protrusion/herniation measuring 4.5 mm producing moderate left neural foramen stenosis touching the left L3 nerve root to the ALJ for further action consistent with this decision.

We reverse the ALJ's determination that the claimant reached MMI on March 26, 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 five percent, and we remand the IR issue to the ALJ for further action consistent with this decision.

We reverse the ALJ's determination that the claimant did not have disability from April 30, 2021, through the date of the CCH, and we remand the disability issue for that period 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 L5-S1 severe stenosis of the bilateral lateral recesses impinging the bilateral S1 nerve roots, L5-S1 severe bilateral neural foramen stenosis impinging the bilateral L5 nerve roots, and an L3-4 left foraminal disc protrusion/herniation measuring 4.5 mm producing moderate left neural foramen stenosis touching the left L3 nerve root, the claimant's date of MMI, the claimant's IR, and whether the claimant had disability from April 30, 2021, through the date of the CCH.

(Dr. H) is the most recently appointed designated doctor in this case. If a new certification is necessary in this case, the ALJ is to determine whether Dr. H is still qualified and available to be the designated doctor. If Dr. H is no longer qualified or available to serve as the designated doctor, and if necessary, another designated doctor is to be appointed pursuant to the Texas Department of Insurance, Division of Workers' Compensation (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 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) considering the medical record and the certifying examination.

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 **INDEMNITY INSURANCE COMPANY OF NORTH AMERICA** 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