

APPEAL NO. 221998
FILED FEBRUARY 3, 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 November 8, 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), extends to an aggravation of disc herniation with stenosis at L4-5 and disc herniation with stenosis at L5-S1, but not spondylolisthesis at L5-S1; (2) the respondent (claimant) has not reached maximum medical improvement (MMI); and (3) because the claimant has not reached MMI, an impairment rating (IR) cannot be assigned. The appellant (carrier) appealed that portion of the ALJ's extent-of-injury determination that was against it, as well as the ALJ's MMI and IR determinations. The claimant responded, urging affirmance of the appealed determinations.

The ALJ's determination that the compensable injury of (date of injury), does not extend to spondylolisthesis at L5-S1 was not appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed in part and reversed and remanded in part.

The parties stipulated, in part, that on (date of injury), the claimant sustained a compensable injury at least in the form of the carrier-accepted condition of lumbar sprain/strain and that (Dr. A) was appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division) as designated doctor on the issues of MMI, IR, and extent of injury. The claimant, a parts clerk, was injured after squatting to put down a box that weighed approximately 50-60 pounds. He testified that when he stood up, he felt a pinch and pop in his back and pain that went down his left leg.

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

The ALJ's determination that the compensable injury of (date of injury), extends to an aggravation of disc herniation with stenosis at L4-5 and stenosis at L5-S1 is supported by sufficient evidence and is affirmed.

The ALJ also determined that the compensable injury of (date of injury), extends to a disc herniation at L5-S1. The ALJ stated in the discussion portion of his decision that "[Dr. A], the designated doctor, persuasively explained how the disputed conditions of L4-5 disc herniation with stenosis and L5-S1 disc herniation with stenosis were caused by the compensable injury."

The carrier noted in its appeal that Dr. A did not specifically opine on the causation of a L5-S1 herniation. In explaining his opinion regarding the extent of the claimant's compensable injury, Dr. A stated in his April 12, 2022, narrative report:

In my medical opinion, as the patient extended his back, and then twisted his body when he felt a pop in his back this resulted in an increase [in] axial and tensional type of forces on [the] lumbar spine resulting in the aggravation of the preexisting degenerative disc at [L4-5] causing it to extrude the disc material and become a herniation. In my medical opinion this also resulted in the aggravation to the foramina [sic] stenosis present at [L4-5] and L5-S1, resulting in the inflammation of the L5 and S1 nerve roots resulting in a radiculopathy at these levels.

Although Dr. A discussed stenosis at the L5-S1 level, he did not opine on a disc herniation at that level.

The ALJ's statement that Dr. A persuasively explained how the disputed condition of an L5-S1 disc herniation was caused by the compensable injury is a misstatement of the evidence. While the ALJ can accept or reject in whole or in part Dr. A's opinion, the ALJ's decision in this case is based, in part, on a misstatement of the medical evidence in the record. Accordingly, we reverse the ALJ's determination that the (date of injury), compensable injury extends to a disc herniation at L5-S1, and we remand the issue of whether the (date of injury), compensable injury extends to a disc herniation at L5-S1 to the ALJ for further action consistent with this decision.

MMI AND IR

Because we have reversed and remanded a portion of the extent-of-injury issue, we also reverse the ALJ's determinations that the claimant has not reached MMI, and because the claimant has not reached MMI, an IR cannot be assigned. We remand the issues of MMI and IR to the ALJ for further action consistent with this decision.

SUMMARY

We affirm the ALJ's determination that the compensable injury of (date of injury), extends to an aggravation of disc herniation with stenosis at L4-5 and stenosis at L5-S1.

We reverse the ALJ's determination that the (date of injury), compensable injury extends to a disc herniation at L5-S1, and we remand the issue of whether the (date of injury), compensable injury extends to a disc herniation at L5-S1 to the ALJ for further action consistent with this decision.

We reverse the ALJ's determinations that the claimant has not reached MMI, and because the claimant has not reached MMI, an IR cannot be assigned. We remand the issues of MMI and IR to the ALJ for further action consistent with this decision.

REMAND INSTRUCTIONS

On remand the ALJ is to correct the misstatement regarding Dr. A's extent-of-injury opinion. The ALJ shall consider all of the evidence and make a determination whether the (date of injury), compensable injury extends to a disc herniation at L5-S1 that is supported by the evidence. The ALJ is then to make determinations regarding MMI and 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 **AIU 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.**

Cristina Beceiro
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge