

APPEAL NO. 230066
FILED MARCH 6, 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 was held on August 17, 2022, with the record closing on November 28, 2022, in (city), Texas, with the (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 C2-3 disc bulge, C3-4 stenosis, C4-5 stenosis, C5-6 disc bulge, cervical radiculopathy, cervical cord compression, L5-S1 stenosis, L5-S1 herniated disc, lumbar radiculopathy, or severe canal stenosis at T4-5 due to disc protrusion and facet ligamentous hypertrophy; (2) the appellant (claimant) reached maximum medical improvement (MMI) on September 9, 2019; and (3) the claimant's impairment rating (IR) is 10%. The claimant appealed the ALJ's determinations. The respondent (carrier) responded, urging affirmance of the ALJ's determinations.

DECISION

Reversed and remanded.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury), that extends to a cervical sprain/strain and a lumbar sprain/strain. The claimant, a truck driver for the employer, was injured on (date of injury), when the truck he was driving was struck by a train.

EXTENT OF INJURY

The ALJ determined the compensable injury did not extend to the claimed conditions. The ALJ stated in the discussion portion of the decision that the claimant described the train as "slow-moving."

However, a review of the record in this case indicates that the claimant did not testify that the train was "slow-moving." The ALJ has misstated the claimant's testimony in this case regarding the manner in which the compensable injury is alleged to have occurred. We view the ALJ's misstatement of the evidence as a material misstatement of fact. While the ALJ can accept or reject in whole or in part the evidence regarding the claimed injury, his decision in this case is based upon an incorrect mechanism of injury and requires that we reverse his determination on the extent of the claimant's compensable injury. See Appeals Panel Decision (APD) 172522, decided December 6, 2017, and APD 210449, decided May 24, 2021. We reverse the ALJ's determination that the compensable injury of (date of injury), does not extend to a C2-3 disc bulge, C3-4 stenosis, C4-5 stenosis, C5-6 disc bulge, cervical radiculopathy, cervical cord compression, L5-S1 stenosis, L5-S1

herniated disc, lumbar radiculopathy, or severe canal stenosis at T4-5 due to disc protrusion and facet ligamentous hypertrophy, and we remand the issue of whether the compensable injury of (date of injury), extends to a C2-3 disc bulge, C3-4 stenosis, C4-5 stenosis, C5-6 disc bulge, cervical radiculopathy, cervical cord compression, L5-S1 stenosis, L5-S1 herniated disc, lumbar radiculopathy, and severe canal stenosis at T4-5 due to disc protrusion and facet ligamentous hypertrophy for further action consistent with this decision.

MMI/IR

Because we have reversed and remanded the issue of whether the compensable injury of (date of injury), extends to a C2-3 disc bulge, C3-4 stenosis, C4-5 stenosis, C5-6 disc bulge, cervical radiculopathy, cervical cord compression, L5-S1 stenosis, L5-S1 herniated disc, lumbar radiculopathy, and severe canal stenosis at T4-5 due to disc protrusion and facet ligamentous hypertrophy, we also reverse the ALJ's determinations that the claimant reached MMI on September 9, 2019, and that the claimant's IR is 10%, and we remand the issues of MMI and IR to the ALJ for further action consistent with this decision.

SUMMARY

We reverse the ALJ's determination that the compensable injury of (date of injury), does not extend to a C2-3 disc bulge, C3-4 stenosis, C4-5 stenosis, C5-6 disc bulge, cervical radiculopathy, cervical cord compression, L5-S1 stenosis, L5-S1 herniated disc, lumbar radiculopathy, or severe canal stenosis at T4-5 due to disc protrusion and facet ligamentous hypertrophy, and we remand the issue of whether the compensable injury of (date of injury), extends to a C2-3 disc bulge, C3-4 stenosis, C4-5 stenosis, C5-6 disc bulge, cervical radiculopathy, cervical cord compression, L5-S1 stenosis, L5-S1 herniated disc, lumbar radiculopathy, and severe canal stenosis at T4-5 due to disc protrusion and facet ligamentous hypertrophy for further action consistent with this decision.

We reverse the ALJ's determination that the claimant reached MMI on September 9, 2019, and we remand the issue of MMI to the ALJ for further action consistent with this decision.

We reverse the ALJ's determination that the claimant's IR is 10%, and we remand the issue of the claimant's IR to the ALJ for further action consistent with this decision.

REMAND INSTRUCTIONS

On remand the ALJ is to correct his misstatement of the evidence regarding the mechanism of the compensable injury. The ALJ shall consider all of the evidence and make findings of fact, conclusions of law, and a determination on whether compensable injury of (date of injury), extends to a C2-3 disc bulge, C3-4 stenosis, C4-5 stenosis, C5-6 disc bulge,

cervical radiculopathy, cervical cord compression, L5-S1 stenosis, L5-S1 herniated disc, lumbar radiculopathy, and severe canal stenosis at T4-5 due to disc protrusion and facet ligamentous hypertrophy. The ALJ is then to make findings of fact, conclusions of law, and a determination on the claimant's date of MMI and IR 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 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 APD 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **EVEREST NATIONAL 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 78701-3218.**

Cristina Beceiro
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge