

APPEAL NO. 230114  
FILED MARCH 10, 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 16, 2022, with the record closing on January 3, 2023, 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 appellant (claimant) reached maximum medical improvement (MMI) on March 10, 2022; (2) the claimant's impairment rating (IR) is zero percent; and (3) the claimant did not have disability from March 11, 2022, through the date of the CCH. The claimant appealed, disputing the ALJ's determinations. The respondent (self-insured) responded, urging affirmance of the ALJ's determinations.

On February 16, 2023, the claimant filed a supplemental appeal containing additional medical documentation. However, the supplemental appeal was not filed within 15 days of the claimant's receipt of the ALJ's decision and order, pursuant to Section 410.202; therefore, the claimant's supplemental appeal was not considered.

**DECISION**

Affirmed in part and reversed by striking in part.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury), that extends to at least COVID-19 infection, bilateral pneumonia, hypoxia, acute respiratory failure, fatigue, dyspnea, asthma, and cough variant asthma; and (Dr. B) was appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division) on the issues of MMI, IR, and disability. The claimant, a correctional officer for the employer, contracted COVID-19 while working for the employer on (date of injury).

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).

**MMI/IR**

The ALJ's determinations that the claimant reached MMI on March 10, 2022, with a zero percent IR are supported by sufficient evidence and are affirmed.

### **DISABILITY**

The parties agreed at the CCH to amend the disability issue to address a period from March 11, 2022, through August 3, 2022. The ALJ noted the parties agreed to amend this issue as such in Issue Statement No. 3 of the decision and order. However, the ALJ made a finding of fact, conclusion of law, and a decision that the claimant did not have disability from March 11, 2022, through the date of the CCH.

The ALJ's disability determination exceeded the scope of the disability issue before him to decide. Accordingly, we strike that portion of the ALJ's determination that the claimant did not have disability from August 4, 2022, through the date of the CCH. That portion of the ALJ's determination that the claimant did not have disability from March 11, 2022, through August 3, 2022, is supported by sufficient evidence and is affirmed.

### **SUMMARY**

We affirm the ALJ's determination that the claimant reached MMI on March 10, 2022.

We affirm the ALJ's determination that the claimant's IR is zero percent.

We affirm that part of the ALJ's determination that the claimant did not have disability from March 11, 2022, through August 3, 2022.

We strike that portion of the ALJ's determination that the claimant did not have disability from August 4, 2022, through the date of the CCH as exceeding the scope of the disability issue before the ALJ.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

For service in person the address is:

(NAME)  
(ADDRESS)  
(CITY), (STATE) (ZIP CODE).

For service by mail the address is:

(NAME)  
(ADDRESS)  
(CITY), (STATE) (ZIP CODE).

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Carisa Space-Beam  
Appeals Judge

CONCUR:

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Cristina Beceiro  
Appeals Judge

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Margaret L. Turner  
Appeals Judge