

APPEAL NO. 230145  
FILED MARCH 23, 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 September 21, 2022, with the record closing on December 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 respondent (claimant) sustained a compensable injury on (date of injury); (2) the appellant (carrier) did not waive the right to contest compensability of the claimed injury by not timely contesting the injury in accordance with Sections 409.021 and 409.022; (3) the claimant had disability resulting from the compensable injury from January 9, 2022, through the date of the CCH of September 21, 2022; and (4) the short-term disability (STD) benefits received by the claimant after the date of injury (DOI) were not considered post-injury earnings (PIE) under 28 Tex. Admin. Code § 129.2 (Rule 129.2). The carrier appealed, disputing the ALJ's determinations regarding compensability, disability, and STD benefits. There was no response from the claimant in the appeal file.

The ALJ's determination that the carrier did not waive the right to contest compensability of the claimed injury by not timely contesting the injury in accordance with Sections 409.021 and 409.022 was not appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated, in part, that: the claimant's average weekly wage is \$669.00; the claimant received STD payments from January 16, 2022, through April 10, 2022; and the claimant received long-term disability (LTD) payments from April 11, 2022, through the date of the CCH in the amount of \$1,378.46 per month. The claimant was injured on (date of injury), while working as a machine operator when she raised her right arm to adjust a stack of paper bags and felt pain in her right shoulder. We note that the carrier argued in its appeal that the ALJ failed to address the LTD payments. However, we further note that the issue of whether the claimant's LTD benefits constituted PIE was not a certified issue before the ALJ; therefore, we perceive no error in the ALJ's failure to address it. See Appeals Panel Decision (APD) 041473, decided July 30, 2004.

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).

### **COMPENSABILITY**

The ALJ's determination that the claimant sustained a compensable injury on (date of injury), is supported by sufficient evidence and is affirmed.

### **DISABILITY**

The ALJ's determination the claimant had disability resulting from the compensable injury from January 9, 2022, through the date of the CCH of September 21, 2022, is supported by sufficient evidence and is affirmed.

### **STD BENEFITS**

Rule 129.2(d)(5) provides that PIE shall not include any money paid to an employee under an indemnity disability program paid for by the employee separate from workers' compensation. Additionally, in APD 010144, decided February 21, 2001, we stated that the carrier in that case may take credit for STD payments made to the claimant after the effective date of Rule 129.2 to the extent such disability payments were funded by the employer. See APD 010144, *supra*.

The ALJ determined in this case that the STD benefits received by the claimant after the date of the claimed injury were not PIE. However, during the CCH, (Ms. G), the employer's human resources representative, provided testimony that the employer pays 100% of the STD benefits and that employees do not have a co-pay for STD benefits. Additionally, in evidence are earnings statements for the claimant that cover the period from March 27, 2022, through April 16, 2022. These statements show that the claimant was paid STD at a rate of 60% of her income. They also note any deductions from the claimant's pay. However, there is no deduction notated for STD. As the great weight of the evidence indicates that the STD benefits were funded by the employer, we reverse the ALJ's determination that the STD benefits received by the claimant after the DOI were not considered PIE under Rule 129.2. We render a new determination that the STD benefits received by the claimant after the DOI were considered PIE under Rule 129.2.

### **SUMMARY**

We affirm the ALJ's determination that the claimant sustained a compensable injury on (date of injury).

We affirm the ALJ's determination the claimant had disability resulting from the compensable injury from January 9, 2022, through the date of the CCH of September 21, 2022.

We reverse the ALJ's determination that the STD benefits received by the claimant after the DOI were not considered PIE under Rule 129.2, and we render a new determination that the STD benefits received by the claimant after the DOI were considered PIE under Rule 129.2.

The true corporate name of the insurance carrier is **AMERICAN ZURICH 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