

APPEAL NO. 230261
FILED APRIL 5, 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 January 17, 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 compensable injury of (date of injury), does not extend to bilateral hip osteoarthritis or bilateral foraminal stenosis from L2-3 through L4-5; (2) the appellant (claimant) reached maximum medical improvement (MMI) on November 9, 2022; and (3) the claimant's impairment rating (IR) is five percent. The claimant appealed, disputing the ALJ's determinations. The respondent (carrier) responded, urging affirmance of the ALJ's determinations.

DECISION

Affirmed in part, and reversed and remanded in part.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury); the carrier has accepted a lumbar strain as the compensable injury; the Texas Department of Insurance, Division of Workers' Compensation (Division) appointed (Dr. A) as designated doctor for the issues of extent of injury, MMI, and IR. The claimant testified that he was injured while unloading boxes 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).

EXTENT OF INJURY

That portion of the ALJ's determination that the compensable injury does not extend to bilateral hip osteoarthritis or bilateral foraminal stenosis from L2-3 through L4-5 is supported by sufficient evidence and is affirmed.

In evidence is the Benefit Review Conference (BRC) report dated November 29, 2022. The BRC report reflects the following conditions were included in the extent-of-injury issue: bilateral hip osteoarthritis and bilateral foraminal stenosis from L2-3

through L5-S1. The extent-of-injury issue statement in the decision omits bilateral foraminal stenosis at L5-S1. At the CCH the ALJ read the extent-of-injury issue as reflected on the BRC report but failed to include bilateral foraminal stenosis at L5-S1 in the issue statement of the decision. The ALJ failed to address the condition of bilateral foraminal stenosis at L5-S1 in the decision. The parties agreed to the issue statement as read by the ALJ and reflected in the BRC report. A review of the record reflects that the parties actually litigated the compensability of bilateral foraminal stenosis at L5-S1. The ALJ failed to make any findings of fact, conclusions of law, or a decision regarding that condition. See Appeals Panel Decision (APD) 201204, decided September 28, 2020, and APD 150510, decided April 21, 2015. We therefore reverse the ALJ's extent-of-injury determination as being incomplete, and we remand the issue of whether the compensable injury extends to bilateral foraminal stenosis at L5-S1 to the ALJ for further action consistent with this decision.

MMI/IR

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 November 9, 2022, with a five percent IR, and we remand the issues of MMI and IR 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 bilateral hip osteoarthritis or bilateral foraminal stenosis from L2-3 through L4-5.

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 bilateral foraminal stenosis at L5-S1 to the ALJ for further action consistent with this decision.

We reverse the ALJ's determination that the claimant reached MMI on November 9, 2022, 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.

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 bilateral foraminal stenosis at L5-S1, the claimant's date of MMI, and the claimant's IR.

Dr. A is the designated doctor. If a new certification of MMI and IR is necessary in this case, the ALJ is to determine whether Dr. A is still qualified and available to be the designated doctor. If Dr. A is no longer qualified or available to serve as the designated doctor, then another designated doctor is to be appointed pursuant to 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 APD 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **STONINGTON INSURANCE COMPANY** 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.**

Margaret L. Turner
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Carisa Space-Beam
Appeals Judge