

APPEAL NO. 230368
FILED MAY 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 January 25, 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 respondent (claimant) sustained a compensable injury on (date of injury); and (2) the claimant had disability resulting from the compensable injury of (date of injury), from September 17, 2022, through November 14, 2022. The appellant (carrier) appeals the ALJ's determinations that the claimant sustained a compensable injury and had disability.

DECISION

Affirmed in part and reversed and remanded in part.

The claimant testified that he injured his back on (date of injury), while stomping on the top of a silo to cause a vibration that would help material to flow down into the silo.

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).

COMPENSABLE INJURY

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

DISABILITY

That portion of the ALJ's determination that the claimant had disability resulting from the compensable injury of (date of injury), from September 17, 2022, through November 14, 2022, is supported by sufficient evidence and is affirmed.

According to the Benefit Review Conference Report the disability issue in dispute was as follows: Did the claimant have disability resulting from the claimed injury from

August 30, 2022, to the present? However, at the CCH the parties agreed to modify the dates of disability in dispute. The ALJ correctly identified the modified disability issue agreed to by the parties in the Decision as follows: Did the claimant have disability resulting from the claimed injury of (date of injury), from September 9, 2022, through November 14, 2022?

We note that on page one of the decision, the ALJ stated that the claimant does have disability resulting from the compensable injury of (date of injury), from September 9, 2022, through November 14, 2022. Further, we note that the ALJ did not include the dates of September 9, 2022, through September 16, 2022, in his discussion of disability.

Section 410.168 provides that an ALJ's decision contain findings of fact and conclusions of law, a determination of whether benefits are due, and an award of benefits due. 28 Tex. Admin. Code § 142.16 (Rule 142.16) provides that an ALJ's decision shall be in writing and include findings of fact, conclusions of law, and a determination of whether benefits are due and if so, an award of benefits due. As previously noted, the beginning date of the period of disability in dispute at the CCH was September 9, 2022. However, the ALJ failed to make a finding of fact or conclusion of law of whether the claimant had disability from September 9, 2022, through September 16, 2022. Because the ALJ failed to make a determination on the entire disability period properly before him to determine, the ALJ's decision is reversed as being incomplete. See Appeals Panel Decision (APD) 171088, decided June 21, 2017, and APD 182482, decided December 19, 2018. We remand that portion of the disability issue to the ALJ to determine whether the claimant had disability from September 9, 2022, through September 16, 2022.

SUMMARY

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

We affirm that portion of the ALJ's determination that the claimant had disability from September 17, 2022, through November 14, 2022.

We reverse the ALJ's decision as being incomplete and remand that portion of the disability issue to the ALJ to determine whether the claimant had disability from September 9, 2022, through September 16, 2022.

REMAND INSTRUCTIONS

On remand the ALJ is to make findings of fact, conclusions of law, and a decision regarding whether the claimant had disability from September 9, 2022, through September 16, 2022.

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 **INDEMNITY INSURANCE COMPANY OF NORTH AMERICA** 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