

APPEAL NO. 230723
FILED JUNE 28, 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 April 6, 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) did not sustain a compensable injury on (date of injury); (2) the respondent (carrier) is not relieved from liability under Section 409.002 because of a failure by the claimant to timely notify his employer pursuant to Section 409.001; and (3) because the claimant did not sustain a compensable injury, he did not have disability beginning August 26, 2022, and continuing through January 25, 2023. The claimant appealed, disputing the ALJ's compensability and disability determinations. The carrier responded, urging affirmance of the appealed determinations.

The ALJ's determination that the carrier is not relieved from liability under Section 409.002 because of a failure by the claimant to timely notify his employer pursuant to Section 409.001 was not appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed in part and reversed by striking in part.

The claimant, a truck driver, claimed that he was injured on (date of injury), while driving. He testified that he was gripping the steering wheel with both hands on that date when he felt clicking and popping in his left thumb.

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 did not sustain a compensable injury on (date of injury), is supported by sufficient evidence and is affirmed.

DISABILITY

In evidence is a Benefit Review Conference (BRC) Report dated February 7, 2023. The BRC report states that the third disputed issue is: Did the claimant have disability resulting from the claimed injury? At the CCH on April 6, 2023, the parties agreed to amend the disability issue to read: Did the claimant have disability resulting from the claimed injury from August 26, 2022, through January 22, 2023? However, the ALJ then made a finding of fact, conclusion of law, and a decision that the claimant did not have disability from August 26, 2022, through January 25, 2023.

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 January 23, 2023, through January 25, 2023. That portion of the ALJ's determination that the claimant did not have disability from August 26, 2022, through January 22, 2023, is supported by sufficient evidence and is affirmed.

SUMMARY

We affirm the ALJ's determination that the claimant did not sustain a compensable injury on (date of injury).

We affirm that part of the ALJ's determination that the claimant did not have disability from August 26, 2022, through January 22, 2023.

We strike that portion of the ALJ's determination that the claimant did not have disability from January 23, 2023, through January 25, 2023, as exceeding the scope of the disability issue before the ALJ.

The true corporate name of the insurance carrier is **GREAT WEST CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**MICHAEL METZGER
624 SIX FLAGS DRIVE, SUITE 240
ARLINGTON, TEXAS 76011.**

Cristina Beceiro
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge