

APPEAL NO. 230780
FILED JULY 19, 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 3, 2023, with the record closing on April 18, 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 sustained on (date of injury), does not extend to osteoarthritis; (2) according to the parties' agreement, the compensable injury of (date of injury), does not extend to diabetes; (3) the appellant (claimant) reached maximum medical improvement (MMI) on the statutory MMI date of November 30, 2022; and (4) the claimant's impairment rating (IR) is eight percent. The claimant appealed, disputing the ALJ's determinations of extent of injury, MMI, and IR. The respondent (carrier) responded, urging affirmance of the disputed extent of injury, MMI, and IR determinations.

DECISION

Affirmed as reformed.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury); the carrier has accepted a contusion of the right thigh, left hand strain, left thumb fracture, left thumb sprain, and left trigger thumb as the compensable injury; the compensable injury of (date of injury), does not extend to diabetes; and the Texas Department of Insurance, Division of Workers' Compensation appointed (Dr. H) as designated doctor on the issues of MMI, IR, and extent of the claimant's compensable injury. The claimant testified that he was injured when he was unclogging sewage.

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

The Benefit Review Conference Report listed the extent-of-injury issue as follows:

Does the compensable injury of (date of injury), extend to and include trigger thumb, osteoarthritis, and diabetes?

The parties agreed to amend the extent-of-injury issue at the CCH and stipulated that the compensable injury extends to left trigger thumb. The ombudsman told the ALJ at the CCH that the claimant was not pursuing the condition of diabetes. The parties stipulated that the compensable injury of (date of injury), does not extend to diabetes. The extent-of-injury issue was modified to remove the condition of left trigger thumb. However, the ALJ did not modify the extent-of-injury issue to remove the condition of diabetes.

The ALJ's determination that the compensable injury of (date of injury), does not extend to osteoarthritis is supported by sufficient evidence and is affirmed.

The ALJ made a determination that the compensable injury of (date of injury), does not extend to diabetes according to the parties' agreement but failed to make a corresponding conclusion of law. See Appeals Panel Decision 230400, decided May 3, 2023. 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. Because the parties stipulated that the compensable injury of (date of injury), does not extend to diabetes as reflected in Finding of Fact No.1.F. we reform Conclusion of Law No. 3 in part to read as follows:

The compensable injury of (date of injury), does not extend to or include osteoarthritis or diabetes.

MMI/IR

The ALJ's determination that the claimant reached MMI on the statutory MMI date of November 30, 2022, is supported by sufficient evidence and is affirmed.

The ALJ's determination that the claimant's IR is eight percent is supported by sufficient evidence and is affirmed.

SUMMARY

We affirm as reformed that portion of the ALJ's determination that the compensable injury of (date of injury), does not extend to osteoarthritis or diabetes.

We affirm the ALJ's determination that the claimant reached MMI on the statutory MMI date of November 30, 2022.

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

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**JEANETTE WARD, PRESIDENT AND CEO
2200 ALDRICH STREET
AUSTIN, TEXAS 78723.**

Margaret L. Turner
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Carisa Space-Beam
Appeals Judge