

APPEAL NO. 230841
FILED AUGUST 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 April 20, 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) sustained a compensable injury on (date of injury); and (2) the claimant had disability resulting from the compensable injury from February 10, 2023, through the date of the CCH. The claimant appealed, arguing that the ALJ failed to address the entire period of disability in dispute at the CCH. The respondent (carrier) responded, urging affirmance of the ALJ's disability determination. The ALJ's determination that the claimant sustained a compensable injury on (date of injury), was not appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed in part and reversed and remanded in part.

The claimant testified that he worked for the employer as an electrical apprentice. He further testified that he was injured on (date of injury), when he was pulling wire and heard a loud pop in his right shoulder.

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).

DISABILITY

The Benefit Review Conference Report in evidence shows that the disputed disability issue was as follows: Did the claimant have disability resulting from the claimed injury from November 16, 2022, through January 22, 2023? The decision and order notes that the parties agreed to amend the disability issue. A review of the record reflects the parties agreed to the disability issue as follows: Did the claimant have disability resulting from the claimed injury from November 16, 2022, through the date of the CCH? However, in the decision and order the ALJ mistakenly stated the disability

issue was: Did the claimant have disability resulting from the claimed injury from February 10, 2023, through the date of the CCH?

The ALJ made findings of fact, conclusions of law, and a decision regarding the disability issue only on the dates from February 10, 2023, through the date of the CCH. The ALJ's determination that the claimant had disability resulting from the compensable injury from February 10, 2023, through the date of the CCH is supported by sufficient evidence and is affirmed.

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. However, the ALJ failed to make a finding of fact, conclusion of law, or decision of whether the claimant had disability from November 16, 2022, through February 9, 2023. Because the ALJ failed to make a determination on the entire disability period as properly before him to determine, the ALJ's decision is reversed as being incomplete. See Appeals Panel Decision (APD) 171088, decided June 21, 2017. Accordingly, we reverse the ALJ's decision as being incomplete and remand a portion of the disability issue to the ALJ to determine whether the claimant had disability from November 16, 2022, through February 9, 2023.

We note the claimant testified that he normally worked 40 hours per week prior to the injury and that he returned to work for the employer after the injury for a two-week period. In evidence are pay records which indicate the claimant worked 14.5 hours during the pay period of January 19, 2023, through January 25, 2023; and that the claimant worked 21 hours during the pay period of February 2, 2023, through February 8, 2023.

SUMMARY

We affirm that portion of the ALJ's determination that claimant had disability resulting from the compensable injury from February 10, 2023, through the date of the CCH.

We reverse the ALJ's decision as being incomplete and remand a portion of the disability issue to the ALJ to determine whether the claimant had disability from November 16, 2022, through February 9, 2023.

REMAND INSTRUCTIONS

On remand, the ALJ is to make findings of fact, conclusions of law, and a determination as to whether the claimant had disability from November 16, 2022, through February 9, 2023.

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 Texas Department of Insurance, Division of Workers' Compensation, 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 **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