

APPEAL NO. 231080
FILED SEPTEMBER 11, 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 was held on June 12, 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), extends to post-traumatic stress disorder (PTSD); (2) the respondent (claimant) reached maximum medical improvement (MMI) on October 14, 2022; and (3) the claimant's impairment rating (IR) is 26%. The appellant (carrier) appealed ALJ's extent of injury, MMI, and IR determinations. The claimant responded, urging affirmance of the appealed determinations.

DECISION

Reversed and remanded.

The parties stipulated, in part, that: (1) on (date of injury), the claimant sustained a compensable injury that includes at least a left lumbar strain, pain in joint pelvic region, L5 fracture, lumbar radiculitis, sacral ala fracture, left sacroiliac joint dislocation, left pubic ramus fracture, pubic symphysis subluxation, pelvic ring disruption, and left acetabular fracture; (2) the compensable injury of (date of injury), does not extend to major depressive disorder and anxiety disorder; (3) the Texas Department of Insurance, Division of Workers' Compensation (Division) appointed (Dr. L) as designated doctor to determine extent of injury, MMI, and IR; and (4) the date of statutory MMI is October 25, 2022. The claimant, a railroad conductor, was injured on (date of injury), when a train rail car struck and ran over him.

EXTENT OF INJURY

28 Tex. Admin. Code § 127.130(a) (Rule 127.130(a)) provides, in part, that this section applies to designated doctor assignments. Rule 127.130(b)(7) states that to determine injuries and diagnoses relating to mental and behavioral disorders, a designated doctor must be a licensed medical doctor or doctor of osteopathy.

The ALJ determined that the compensable injury of (date of injury), extends to PTSD based on the opinion of Dr. L, the designated doctor. The ALJ stated in his decision that Dr. L's opinion was persuasive. However, the ALJ goes on to state that the extent-of-injury opinion from (Dr. H), the carrier-selected required medical examination doctor, cannot be adopted pursuant to Rule 127.130(b)(7). Although Dr. H is a doctor of chiropractic and not a medical doctor or a doctor of osteopathy, as noted

above, Rule 127.130 applies to designated doctors and not required medical examination doctors. Therefore, Dr. H's opinion cannot be excluded on that basis.

Although pursuant to Section 410.165(a) the ALJ could accept or reject in whole or in part any evidence, the ALJ incorrectly stated that Dr. H's opinion cannot be adopted pursuant to Rule 127.130(b)(7). Accordingly, we reverse the ALJ's determination that the compensable injury of (date of injury), extends to PTSD, and we remand the extent-of-injury issue to the ALJ. On remand, the ALJ is to consider Dr. H's opinion and give it proper weight.

MMI AND IR

As we have remanded the issue whether the compensable injury of (date of injury), extends to PTSD, we must also reverse the ALJ's determinations that the claimant reached MMI on October 14, 2022, and the claimant's IR is 26% and remand the issues of MMI and IR to the ALJ for further action consistent with this decision.

Pursuant to Section 410.203(c), the Appeals Panel may not remand a case more than once. Given that we are remanding this case for the ALJ to make determinations on whether the compensable injury extends to PTSD, MMI, and IR, we note that the IR from Dr. L that was adopted by the ALJ contains a mathematical error in the range of motion (ROM) calculation for the left hip. Dr. L's narrative report reflects that he assigned 2% impairment based on 40° of flexion in the left hip. However, Table 40 on page 3/78 of 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) indicates that 40° of hip flexion results in 8% whole person impairment (WPI). Additionally, we note that there is no Report of Medical Evaluation (DWC-69) from Dr. L that places the claimant at MMI on October 14, 2022. The record contains a response to a letter of clarification from Dr. L dated April 3, 2023, in which he states the MMI date should be October 14, 2022, instead of October 24, 2022, but there is no amended DWC-69 in evidence reflecting the change. Dr. L goes on to state in his response that there may be errors in his ROM calculation and that the only means of being correct requires that he reexamine the claimant. The record does not contain a new report from Dr. L.

Finally, we note that the IR from Dr. H that rates the injury as decided by the ALJ also contains an error in the left hip ROM calculation. In the physical evaluation and examination portion of his narrative report, Dr. H correctly notes that the ROM deficits in the claimant's left hip result in a total of 10% impairment. However, in the IR determination and calculations for the pelvis/hip portion of the narrative report, Dr. H mistakenly notes that the ROM impairment for the left hip is 8%.

SUMMARY

We reverse the ALJ's determination that the compensable injury of (date of injury), extends to PTSD, and we remand the extent-of-injury issue to the ALJ for further action consistent with this decision.

We reverse the ALJ's determinations that the claimant reached MMI on October 14, 2022, and the claimant's IR is 26% and remand the issues of MMI and IR to the ALJ for further action consistent with this decision.

REMAND INSTRUCTIONS

On remand, the ALJ is to consider Dr. H's opinion regarding the extent-of-injury issue and give the report proper weight in making his determination. The ALJ is then to make a determination on whether the compensable injury of (date of injury), extends to PTSD considering all of the evidence.

Dr. L is the designated doctor in this case. On remand, the ALJ is to determine whether Dr. L is still qualified and available to be the designated doctor.

The ALJ is to request that the designated doctor rate the entire compensable injury based on the claimant's condition as of the date of MMI. The ALJ is to advise the designated doctor that according to the AMA Guides, 40° of flexion for the hip results in 8% WPI.

The parties are to be provided with the correspondence to the designated doctor, the designated doctor's response, and are to be allowed an opportunity to respond. The ALJ is then to make determinations regarding the issues of MMI and IR that are supported by the evidence and consistent with this decision.

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 Appeals Panel Decision 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 & CEO
2200 ALDRICH STREET
AUSTIN, TEXAS 78723-3474.**

Cristina Beceiro
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge