

APPEAL NO. 231368  
FILED NOVEMBER 15, 2023

This appeal arises pursuant to the Texas Workers' Compensation Act, Tex. Lab. Code Ann. § 401.001 *et seq.* (1989 Act). A bifurcated contested case hearing (CCH) was held on June 22, 2023, and August 16, 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 cervicalgia and lumbar sprain; (2) the compensable injury of (date of injury), does not extend to disc bulges at C3-4 or L5-S1, lumbar radiculopathy, right wrist post-traumatic carpal tunnel syndrome (CTS), right wrist tenosynovitis, or gastroesophageal reflux disease; and (3) the appellant (claimant) did not have disability as a result of the compensable injury from May 18, 2022, and continuing through November 18, 2022.

The claimant appealed, disputing the ALJ's extent-of-injury determination that was adverse to her, as well as the ALJ's disability determination. The respondent (carrier) responded, urging affirmance of the appealed determinations. The ALJ's determination that the compensable injury of (date of injury), extends to cervicalgia and lumbar sprain was not appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed in part and reversed and remanded in part.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury), in the form of at least a cervical strain, lumbar strain, right wrist strain, right wrist bone contusion, and abdominal contusion; the claimant reached maximum medical improvement on December 8, 2022; and the claimant's impairment rating is 10%.

We note the ALJ inadvertently stated in the decision that the date of the first CCH was June 20, 2023, rather than June 22, 2023. Additionally, the ALJ indicated no witnesses testified at the second CCH; however, (Dr. D) testified on behalf of the carrier. Lastly, the decision states that Claimant's Exhibits 1-10 were admitted, but Claimant's Exhibit 8 and a portion of Claimant's Exhibit 9 were excluded at the first CCH.

The claimant, a respiratory therapist, was injured on (date of injury), while she was a passenger on a bus. The claimant testified the driver was driving at a high rate of speed and slammed his brakes, causing her to fall forward.

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 ALJ's determination that the compensable injury of (date of injury), does not extend to disc bulges at C3-4 or L5-S1, lumbar radiculopathy, right wrist post-traumatic CTS, right wrist tenosynovitis, or gastroesophageal reflux disease is supported by sufficient evidence and is affirmed.

### **DISABILITY**

That portion of the ALJ's determination that the claimant did not have disability as a result of the compensable injury from May 18, 2022, and continuing through November 18, 2022, is supported by sufficient evidence and is affirmed.

The disability issue as reflected in the Benefit Review Conference Report and as agreed to by the parties at the CCH was whether the claimant had disability from an injury sustained on (date of injury), from May 2, 2022, through November 18, 2022. The disability issue statement in the ALJ's decision and order reflects the correct disability period in dispute. However, the ALJ made no findings of fact, conclusions of law, or a decision whether the claimant had disability from May 2, 2022, through May 17, 2022.

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 ALJ failed to make a determination on the entire disability period as properly before him to determine, we reverse the ALJ's decision as being incomplete. See Appeals Panel Decision (APD) 171088, decided June 21, 2017, and APD 230841, decided August 3, 2023. We remand a portion of the disability issue to the ALJ to determine whether the claimant had disability from May 2, 2022, through May 17, 2022.

### **SUMMARY**

We affirm the ALJ's determination that the compensable injury of (date of injury), does not extend to disc bulges at C3-4 or L5-S1, lumbar radiculopathy, right wrist post-traumatic CTS, right wrist tenosynovitis, or gastroesophageal reflux disease.

We affirm that portion of the ALJ's determination that the claimant did not have disability from May 18, 2022, through November 18, 2022.

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 May 2, 2022, through May 17, 2022.

### **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 May 2, 2022, through May 17, 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 **NATIONAL LIABILITY & FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
211 EAST 7TH STREET, SUITE 620  
AUSTIN, TEXAS 78701-3218.**

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Carisa Space-Beam  
Appeals Judge

CONCUR:

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Cristina Beceiro  
Appeals Judge

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Margaret L. Turner  
Appeals Judge