

APPEAL NO. 231436
FILED NOVEMBER 21, 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 August 22, 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), does not extend to effusions in the intermetatarsal bursa of the first and second web spaces consistent with bursitis, post-traumatic stress disorder (PTSD), depression, or anxiety; (2) the first certification of maximum medical improvement (MMI) and assigned impairment rating (IR) from (Dr. B) on January 6, 2023, did not become final under Section 408.123 and 28 Tex. Admin. Code § 130.12 (Rule 130.12); (3) the appellant (claimant) reached MMI on November 2, 2022; and (4) the claimant's IR is three percent.

The claimant appealed the ALJ's extent of injury, MMI, IR, and finality determinations. There was no response from the respondent (self-insured) to the claimant's appeal in the appeal file.

DECISION

Affirmed in part and reversed and remanded in part.

The parties stipulated, in part, that: (1) the claimant sustained a compensable injury on (date of injury); (2) the self-insured accepted a thoracic strain, right foot contusion, non-displaced fractures of the right lateral fifth and sixth ribs, and fractures of the distal phalanx of the right index finger as the compensable injury; and (3) the Texas Department of Insurance, Division of Workers' Compensation (Division) appointed Dr. B as designated doctor to determine extent of injury, MMI, IR, and return to work. The claimant, a 911 telecommunicator, was injured on (date of injury), when she was involved in a head-on motor vehicle accident.

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 effusions in the intermetatarsal bursa of the first and second web spaces consistent with bursitis, PTSD, depression, or anxiety is supported by sufficient evidence and is affirmed.

FINALITY

The ALJ's determination that the first certification of MMI and assigned IR from Dr. B on January 6, 2023, did not become final under Section 408.123 and Rule 130.12 is supported by sufficient evidence and is affirmed.

MMI AND IR

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. 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.

The certified issues before the ALJ in this case included: (1) has the claimant reached MMI, and if so, on what date?; and (2) if the claimant has reached MMI, what is the IR? The ALJ states in Conclusion of Law Nos. 5 and 6 and in the Decision section that the claimant reached MMI on November 2, 2022, and the claimant's IR is three percent. In Finding of Fact No. 4, the ALJ states that Dr. B certified the claimant reached MMI on November 2, 2022, with a three percent IR, but the ALJ did not indicate whether she found this certification to be supported by the preponderance of the evidence. Although the ALJ made a conclusion of law, decision, and addressed the issue in her discussion of the evidence, the ALJ failed to make a finding of fact as to which certification in evidence was supported by the preponderance of the evidence. Because the ALJ's decision contains no findings of fact regarding which certification of MMI and IR in evidence was supported by the preponderance of the evidence, which were issues properly before the ALJ to resolve, it does not comply with Section 410.168 and Rule 142.16. We therefore reverse the ALJ's determinations that the claimant reached MMI on November 2, 2022, and the claimant's IR is three percent as being incomplete, and we remand the MMI and IR issues to the ALJ for further action consistent with this decision. See Appeals Panel Decision (APD) 132339, decided December 12, 2013; APD 180839, decided June 4, 2018; and APD 181357, decided July 30, 2018.

SUMMARY

We affirm the ALJ's determination that the compensable injury of (date of injury), does not extend to effusions in the intermetatarsal bursa of the first and second web spaces consistent with bursitis, PTSD, depression, or anxiety.

We affirm the ALJ's determination that the first certification of MMI and assigned IR from Dr. B on January 6, 2023, did not become final under Section 408.123 and Rule 130.12.

We reverse the ALJ's determinations that the claimant reached MMI on November 2, 2022, and the claimant's IR is three percent as being incomplete, and we remand the MMI and IR issues to the ALJ for further action consistent with this decision.

REMAND INSTRUCTIONS

On remand, the ALJ is to make a finding of fact, conclusion of law, and a decision regarding the issues of MMI and IR that is 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 APD 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

(NAME)
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

Cristina Beceiro
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge