

APPEAL NO. 231483
FILED DECEMBER 14, 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 June 26, 2023, with the record closing on August 31, 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 closed head injury, concussion, and left arm abrasions; (2) the appellant/cross-respondent (claimant) reached maximum medical improvement (MMI) on October 23, 2021; (3) the claimant's impairment rating (IR) is zero percent; and (4) the claimant did not have disability from March 9, 2022, through the date of the CCH, resulting from the compensable injury of (date of injury).

The claimant appealed, disputing the ALJ's determinations of MMI, IR, and disability. The respondent/cross-appellant (carrier) responded, urging affirmance of the MMI and IR determinations. The carrier cross-appealed, disputing the ALJ's extent-of-injury determination in favor of the claimant, as well as his MMI and IR determinations. The appeal file does not contain a response from the claimant to the carrier's cross-appeal.

DECISION

Affirmed in part, reversed by striking in part, and reversed and remanded in part.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury), that extends to at least a lumbar strain, thoracic strain, and cervical strain; the date of statutory MMI is April 19, 2023; the compensable injury does not extend to fracture of the fifth lumbar vertebra, C3-4 disc protrusion, C4-5 disc protrusion, C6-7 annular bulge, L4-5 annular bulge, or L5-S1 disc bulge; and that the Texas Department of Insurance, Division of Workers' Compensation (Division) appointed (Dr. S) as designated doctor for purposes of MMI and IR, among other issues. The claimant was injured on (date of injury), when he fell from the fifth floor to the third floor of a building in which he was working. We note the decision states that (Dr. Su) testified at the CCH; however, Dr. Su did not provide any testimony at the CCH.

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

That portion of the ALJ's determination that the compensable injury of (date of injury), extends to closed head injury and concussion is supported by sufficient evidence and is affirmed.

The parties agreed at the CCH to amend the extent-of-injury issue to determine the following conditions: closed head injury, concussion, and "left arm injury." However, the extent-of-injury issue on the decision states the conditions to be addressed are closed head injury, concussion, and left arm abrasions. The record does not establish the parties agreed to amend the extent-of-injury issue to include left arm abrasions rather than the agreed-upon left arm injury. The ALJ discussed left arm abrasions in the discussion portion of the decision, and made findings of fact, conclusions of law, and a decision that the compensable injury extends to left arm abrasions rather than a left arm injury. The portion of the ALJ's determination that the compensable injury extends to left arm abrasions exceeds the scope of the extent-of-injury determination before the ALJ. Accordingly, we reverse that portion of the ALJ's determination that the compensable injury extends to left arm abrasions, and strike it as exceeding the scope of the extent-of-injury issue before the ALJ.

The ALJ failed to make findings of fact, conclusions of law, and a determination whether the compensable injury extends to a left arm injury, which was an issue properly before the ALJ to determine. We therefore reverse the ALJ's extent-of-injury determination as being incomplete, and remand the issue of whether the compensable injury of (date of injury), extends to a left arm injury to the ALJ for further action consistent with this decision.

MMI/IR

Because we have remanded a portion of the extent-of-injury determination, we also reverse the ALJ's determinations that the claimant reached MMI on October 23, 2021, and that the claimant's IR is zero percent. We remand the issues of MMI and IR to the ALJ for further action consistent with this decision.

DISABILITY

The parties agreed at the CCH to amend the disability issue to address a period of March 9, 2022, through April 19, 2023. However, the ALJ made findings of fact, conclusions of law, and a determination for a disability period of March 9, 2022, through

the date of the CCH, which exceeds the scope of the disability issue before him to determine. We therefore reverse that portion of the ALJ's disability determination that the claimant did not have disability from April 20, 2023, through the date of the CCH, and strike it as exceeding the scope of the disability issue before the ALJ.

Because we have remanded a portion of the extent-of-injury determination, we also reverse that portion of the ALJ's determination that the claimant did not have disability from March 9, 2022, through April 19, 2023. We remand the issue of whether the claimant had disability from March 9, 2022, through April 19, 2023, to the ALJ for further action consistent with this decision.

SUMMARY

We affirm that portion of the ALJ's determination that the compensable injury of (date of injury), extends to a closed head injury and concussion.

We reverse that portion of the ALJ's determination that the compensable injury extends to left arm abrasions, and strike it as exceeding the scope of the extent-of-injury issue before the ALJ.

We reverse the ALJ's extent-of-injury determination as being incomplete, and remand the issue of whether the compensable injury of (date of injury), extends to a left arm injury to the ALJ for further action consistent with this decision.

We reverse the ALJ's determination that the claimant reached MMI on October 23, 2021, and remand the MMI issue to the ALJ for further action consistent with this decision.

We reverse the ALJ's determination that the claimant's IR is zero percent, and remand the IR issue to the ALJ for further action consistent with this decision.

We reverse that portion of the ALJ's determination that the claimant did not have disability from April 20, 2023, through the date of the CCH, and strike it as exceeding the scope of the disability issue before the ALJ.

We reverse that portion of the ALJ's determination that the claimant did not have disability from March 9, 2022, through April 19, 2023, and remand the issue of whether the claimant had disability from March 9, 2022, through April 19, 2023, to the ALJ for further action consistent with this decision.

REMAND INSTRUCTIONS

On remand the ALJ is to make findings of fact, conclusions of law, and a determination whether the compensable injury of (date of injury), extends to a left arm injury, the claimant's date of MMI, the claimant's IR, and whether the claimant had disability from March 9, 2022, through April 19, 2023.

Dr. S is the designated doctor in this case. The ALJ is to determine whether Dr. S is still qualified and available to be the designated doctor. If Dr. S is no longer qualified or available to serve as the designated doctor, and if necessary, another designated doctor is to be appointed pursuant to Division rules to opine on the issues of MMI and IR. The ALJ is to inform the designated doctor what conditions are included in the compensable injury. The ALJ is to request that the designated doctor give an opinion on the claimant's date of MMI and rate the entire compensable injury in accordance with 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) considering the medical record and the certifying examination.

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.**

Carisa Space-Beam
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Margaret L. Turner
Appeals Judge