

APPEAL NO. 231661
FILED JANUARY 4, 2024

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 October 18, 2023, in (city), Texas, with (administrative law judge) presiding as the administrative law judge (ALJ). The ALJ resolved the disputed issue by deciding that the compensable injury of (date of injury), does not extend to L4-5 disc bulge or facet arthrosis, L5-S1 disc bulge, L5-S1 marginal osteophytes or facet arthrosis, bilateral stenosis, or lumbar radiculopathy. The appellant (claimant) appealed, disputing the ALJ's determination of extent of injury. The respondent (carrier) responded, urging affirmance of the disputed extent-of-injury determination.

DECISION

Affirmed as reformed.

The claimant testified that he was injured when he fell about 8 feet from a truck while getting a sandbag. The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury), that extends to at least a lumbar strain before July 25, 2018, left shoulder strain, left shoulder rotator cuff tear, and cervical sprain. We note the stipulation addressed in Finding of Fact No. 1.D. incorrectly identifies a cervical strain rather than cervical sprain. We reform Finding of Fact No. 1.D. to state the claimant sustained a compensable injury on (date of injury), that extends to at least a lumbar strain before July 25, 2018, left shoulder strain, left shoulder rotator cuff tear, and cervical sprain to correctly reflect the stipulation made by the parties at the CCH. Additionally, we note that the ALJ inadvertently left off Finding of Fact No. 1.E. in which the parties stipulated that the Texas Department of Insurance, Division of Workers' Compensation (Division) appointed (Dr. S) as designated doctor on the issues of extent of injury, maximum medical improvement (MMI), impairment rating (IR), and return to work. We reform the decision to add Finding of Fact No. 1.E. to correctly reflect the stipulation made by the parties 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).

The claimant argues that the ALJ was biased in favor of the carrier. After carefully reviewing the record, we cannot agree that the ALJ's decision in this instance was the product of bias or prejudice. Rather, we believe that his determination was the result of his resolving the conflicts and inconsistencies in the evidence and assessing credibility. The claimant also complains of ineffective assistance from his ombudsman at the CCH. We have said that an ombudsman is not a legal representative, that the ombudsman is at the CCH to assist the claimant, and that the presentation of the case remains the responsibility of the claimant. See Appeals Panel Decision 001766, decided October 2, 2000. Accordingly, we find no basis to reverse the ALJ's decision.

The ALJ's determination that the compensable injury of (date of injury), does not extend to L4-5 disc bulge or facet arthrosis, L5-S1 disc bulge, L5-S1 marginal osteophytes or facet arthrosis, bilateral stenosis, or lumbar radiculopathy is supported by sufficient evidence and is affirmed.

SUMMARY

We reform Finding of Fact No. 1.D. to state the claimant sustained a compensable injury on (date of injury), that extends to at least a lumbar strain before July 25, 2018, left shoulder strain, left shoulder rotator cuff tear, and cervical sprain.

We reform Finding of Fact No. 1 to add E. as follows: the Division appointed Dr. S as designated doctor on the issues of extent of injury, MMI, IR, and return to work.

We affirm the ALJ's determination that the compensable injury of (date of injury), does not extend to L4-5 disc bulge or facet arthrosis, L5-S1 disc bulge, L5-S1 marginal osteophytes or facet arthrosis, bilateral stenosis, or lumbar radiculopathy.

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