

APPEAL NO. 231650  
FILED JANUARY 11, 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 11, 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 sustained on (date of injury), does not extend to aggravation of lumbar radiculopathy, multi-level neuroforaminal stenosis L5-S1, spondylosis multiple level disc degeneration, 4 mm retrolisthesis L5 on S1, posterior spondylitic ridging, bulging/protruding disc right, posterior annular fissure, moderate facet arthropathy, moderate encroachment on right lateral recess L4-5 broad-based posterior central disc protrusion, 4 mm synovial cyst, or 4-5 mm disc protrusion at L5-S1. The appellant (claimant) appealed, disputing the ALJ's determination of extent of injury. The appeal file does not contain a response from the respondent (carrier) to the claimant's appeal.

DECISION

Affirmed in part and reversed and remanded in part.

The parties stipulated, in part, the claimant sustained a compensable injury on (date of injury), in the form of at least the condition of lumbar spine sprain, and that (Dr. T) was appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division) as designated doctor on the issues of extent of injury and disability. The claimant testified he was injured while helping other employees unload a water heater for installation.

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).

That portion of the ALJ's determination that the compensable injury does not extend to aggravation of lumbar radiculopathy, multi-level neuroforaminal stenosis L5-S1, spondylosis multiple level disc degeneration, 4 mm retrolisthesis L5 on S1, posterior spondylitic ridging, bulging/protruding disc right, posterior annular fissure, moderate facet arthropathy, moderate encroachment on right lateral recess L4-5 broad-based

posterior central disc protrusion, or 4 mm synovial cyst is supported by sufficient evidence and is affirmed.

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.

The Benefit Review Conference Report in evidence indicates the following extent-of-injury issue in this case: Does the compensable injury of (date of injury), extend to and include aggravation of lumbar radiculopathy, multi-level neuroforaminal stenosis L5-S1 right side hip and leg, spondylosis multiple level disc degeneration, 4 mm retrolisthesis L5 on S1, posterior spondylitic ridging, bulging/protruding disc right, posterior annular fissure, moderate facet arthropathy, moderate encroachment on right lateral recess L4-5 broad based posterior central disc protrusion, 4 mm synovial cyst, and L1-2 4-5 mm disc protrusion?

During the CCH, the record indicates that the parties agreed to amend the issue to state: Does the compensable injury of (date of injury), extend to and include aggravation of lumbar radiculopathy, multi-level neuroforaminal stenosis L5-S1, spondylosis multiple level disc degeneration, 4 mm retrolisthesis L5 on S1, posterior spondylitic ridging, bulging/protruding disc right, posterior annular fissure, moderate facet arthropathy, moderate encroachment on right lateral recess L4-5 broad-based posterior central disc protrusion, 4 mm synovial cyst, and L1-2 4-5 mm disc protrusion?

The ALJ correctly deleted "right side hip and leg" following the condition of multi-level neuroforaminal stenosis L5-S1. However, the ALJ determined the compensable injury of (date of injury), does not extend to a 4-5 mm disc protrusion at L5-S1. This determination 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 of (date of injury), does not extend to a 4-5 mm disc protrusion at L5-S1, and we strike that determination as exceeding the scope of the extent-of-injury issue before the ALJ.

The ALJ failed to make a finding of fact, conclusion of law, or decision regarding the certified disputed condition of a 4-5 mm disc protrusion at L1-2. Because the ALJ's decision contains no findings of fact, conclusions of law, or decision regarding whether the compensable injury of (date of injury), extends to a 4-5 mm disc protrusion at L1-2, which was an issue properly before the ALJ to resolve, it does not comply with Section 410.168 and Rule 142.16. Accordingly, we reverse the ALJ's decision as being incomplete and we remand that portion of the extent-of-injury issue to the ALJ as

follows: Does the compensable injury of (date of injury), extend to a 4-5 mm disc protrusion at L1-2? See Appeals Panel Decision (APD) 132339, decided December 12, 2013; APD 180839, decided June 4, 2018; and APD 201204, decided September 28, 2020.

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 4-5 mm disc protrusion at L1-2.

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 **HARTFORD FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM  
1999 BRYAN STREET, SUITE 900  
DALLAS, TEXAS 75201-3136.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Cristina Beceiro  
Appeals Judge

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Carisa Space-Beam  
Appeals Judge