

APPEAL NO. 231747
FILED JANUARY 17, 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 November 1, 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 appellant (claimant) did not sustain a compensable injury on (date of injury); and (2) the claimant did not have disability from the claimed injury. The claimant appealed, disputing the ALJ's determinations. The respondent (carrier) responded, urging affirmance of the ALJ's determinations.

DECISION

Affirmed in part and reversed by striking in part.

The claimant, a scaffolding worker, claimed he was injured on (date of injury), when a trailer pulled by a buggy driven by his supervisor ran over his right foot.

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).

COMPENSABILITY

The ALJ's determination that the claimant did not sustain a compensable injury on (date of injury), is supported by sufficient evidence and is affirmed.

DISABILITY

In evidence is a Benefit Review Conference (BRC) Report dated September 8, 2023, informing the parties that a CCH would be held on November 1, 2023. The BRC report states the CCH will be on the following issues: did the claimant sustain a compensable injury on (date of injury)?; and did the claimant have disability resulting from the claimed injury? At the CCH on November 1, 2023, the parties agreed to amend the disability issue as follows: did the claimant have disability from March 23, 2023, through May 28, 2023, resulting from the claimed injury? However, the ALJ then

made a finding of fact, conclusion of law, and a decision that the claimant did not have disability from (date of injury), through the date of the CCH.

The ALJ's disability determination exceeded the scope of the disability issue before her to decide. Accordingly, we strike that portion of the ALJ's determination that the claimant did not have disability on (date of injury), and from May 29, 2023, through the date of the CCH. That portion of the ALJ's determination that the claimant did not have disability from March 23, 2023, through May 28, 2023, is supported by sufficient evidence and is affirmed.

SUMMARY

We affirm the ALJ's determination that the claimant did not sustain a compensable injury on (date of injury).

We affirm that part of the ALJ's determination that the claimant did not have disability from March 23, 2023, through May 28, 2023.

We strike that portion of the ALJ's determination that the claimant did not have disability on (date of injury), and from May 29, 2023, through the date of the CCH as exceeding the scope of the disability issue before the ALJ.

The true corporate name of the insurance carrier is **INDEMNITY INSURANCE COMPANY OF NORTH AMERICA** 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.**

Cristina Beceiro
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge