

APPEAL NO. 240197
FILED APRIL 5, 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 May 4, 2023, and post-hearing conferences were held on October 17, 2023, and December 4, 2023, with the record closing on December 28, 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 extend to the following conditions of the left lower extremity: low grade partial tearing of the anterior talofibular ligament; superficial soft tissue edema anteriorly, medially, and laterally; anterior talofibular ligament present with possible diffuse short segment split tear at the fibular attachment; and to the following conditions of the right lower extremity: mild thickening of the anterior talofibular ligament; mild to moderate soft tissue edema in the anterolateral ankle; and chronic calcaneofibular ligament partial thickness tear; (2) the compensable injury of (date of injury), does not extend to the following conditions of the left lower extremity: large left ankle calcaneal spur with adjacent marrow edema; thickened plantar fascia at its insertion with low grade undersurface tearing; thickening and tendinopathy changes in the distal posterior tibial tendon along with fluid in its tendon sheath; mild degenerative osteoarthritic changes involving the talonavicular joint; minimal talonavicular and subtalar joint effusion; tiny ganglion cyst overlying the medial aspect of the talar body; left ankle Achilles tendinosis; mild acute plantar fasciitis; trace tibiotalar joint effusion; or the following right lower extremity conditions: minimal fluid in the posterior tibial and flexor hallucis longus (FHL) tendon sheaths; 6mm plantar calcaneal spur; mild plantar fasciitis; mild abductor digit minimal muscle atrophy thought to be related to Baxter's neuropathy; mild diffuse Achilles tendinosis; right ankle plantar fascia central cord origin mild acute fasciitis with possible superimposed tiny partial thickness tear; mild plantar peroneal longus tenosynovitis; small tibiotalar joint effusion; or a right knee contusion, anxiety or depression; (3) the appellant (claimant) did have disability from the compensable injury from October 22, 2019, through April 1, 2020; and (4) the claimant is not entitled to lifetime income benefits (LIBs) from April 1, 2020, through the CCH based on the loss of use of both feet at or above the ankle.

The claimant appealed, disputing that portion of the ALJ's extent-of-injury determination that was contrary to her as well as the LIBs determination. The respondent (carrier) responded, urging affirmance of the disputed determinations.

The ALJ's determinations that the compensable injury of (date of injury), does extend to the following conditions of the left lower extremity: low grade partial tearing of the anterior talofibular ligament; superficial soft tissue edema anteriorly, medially, and

laterally; anterior talofibular ligament present with possible diffuse short segment split tear at the fibular attachment; and to the following conditions of the right lower extremity: mild thickening of the anterior talofibular ligament; mild to moderate soft tissue edema in the anterolateral ankle; and chronic calcaneofibular ligament partial thickness tear and that the claimant did have disability from the compensable injury from October 22, 2019, through April 1, 2020, were not appealed and have become final pursuant to Section 410.169.

DECISION

Reversed and remanded for reconstruction of the record.

Section 410.203(a)(1) requires the Appeals Panel to consider the record developed at the CCH. There are four audio recordings in the appeal file. Two of them are from the post-hearing conferences on October 17, 2023, and December 4, 2023. A third audio recording is from the CCH on May 4, 2023. The recording includes the admission of exhibits, the stipulations of the parties, and part of the claimant's direct examination; however, the recording ends during the direct examination of the claimant. The last audio recording is six seconds with only some beeping sounds. The appeal file does not contain a complete recording of the proceedings. Consequently, we reverse and remand this case to the ALJ who presided over the May 4, 2023, CCH, if possible, for reconstruction of the record. See Appeals Panel Decision (APD) 201653, decided December 8, 2020.

Additionally, we note that in amended Issue 1, the ALJ included a left lower extremity condition as "large ankle plantar calcaneal spur with adjacent soft tissue and marrow edema." However, in Finding of Fact No. 5, Conclusion of Law No. 4, and in the Decision section, the ALJ omits "soft tissue and" from the condition. The ALJ also included in the amended issue a right lower extremity condition as "mild abductor digit minimal muscle fatty atrophy thought to be related to Baxter's neuropathy." However, in Finding of Fact No. 6, Conclusion of Law No. 4, and the Decision section, the ALJ omits "fatty" from the condition.

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 Texas Department of Insurance, Division of Workers' Compensation, 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 **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.**

Cristina Beceiro
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge