

APPEAL NO. 240224  
FILED APRIL 18, 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 was held on November 14, 2023, with the record closing on January 17, 2024, 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 sustained on (date of injury), extends to a right hand crush injury and right radial tunnel syndrome; (2) the compensable injury of (date of injury), does not extend to a right 4th metacarpal fracture, right ulnar nerve entrapment, right radial nerve compression, or right epicondylitis; (3) the appellant (claimant) has not yet reached maximum medical improvement (MMI); and (4) an impairment rating (IR) is premature. The claimant appealed, disputing the ALJ's determinations of extent of injury that were not favorable to him. The appeal file does not contain a response from the respondent (carrier). The ALJ's determinations that the compensable injury extends to a right hand crush injury and right radial tunnel syndrome; the claimant has not yet reached MMI; and an IR is premature were not appealed and have become final pursuant to Section 410.169.

DECISION

Affirmed in part and reversed and remanded in part.

The parties stipulated, in part, that the claimant sustained a compensable injury that extends to at least a right hand contusion and the Texas Department of Insurance, Division of Workers' Compensation (Division) appointed (Dr. Q) as designated doctor to address extent of injury, the date of MMI, IR, disability, and return to work. The claimant testified that he was injured on (date of injury), when he was helping a coworker move a safe that weighed 1,000 pounds and his hand got caught between the safe and door frame.

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 ALJ's determination that the compensable injury does not extend to a right 4th metacarpal fracture, right ulnar nerve entrapment, or right epicondylitis is supported by sufficient evidence and is affirmed.

In her discussion of the evidence, the ALJ stated, "[i]n his response to the presiding officer's directive, Dr. [Q.] understood how the injury occurred and provided a persuasive opinion regarding the disputed conditions for the (date of injury), compensable injury. He opined that the compensable injury resulted in a right hand crush injury and right radial tunnel syndrome, but that the other disputed conditions were not related to the (date of injury), injury." The ALJ determined that the (date of injury), compensable injury did not extend to a right 4th metacarpal fracture, right ulnar nerve entrapment, right radial nerve compression, or right epicondylitis. As previously noted, the ALJ's determination that the compensable injury did not extend to a right 4th metacarpal fracture, right ulnar nerve entrapment, or right epicondylitis is supported by sufficient evidence.

Following an examination on December 16, 2023, which was in response to the presiding officer's directive, Dr. Q issued a report and stated in part, "[b]ased on my examination, [I] feel that it is within a reasonable degree of medical probability the crush injury to his right hand on [(date of injury)], was the substantial factor in causing an aggravation and worsening of his right radial nerve compression...." Dr. Q further stated, "[t]he claimant underwent a right revision of the radial nerve with a neurolysis on [December 6, 2023,] which according to the specialist was directly related to the work accident on [(date of injury)]. Specifically the work accident caused the right hand crush injury and right radial nerve compression...." Additionally, in a report issued after a February 18, 2023, examination, Dr. Q stated that "... based on my review of the medical records and mechanism of injury determine that it is within a reasonable degree of medical probability the crush injury to his right hand was the substantial factor in causing the radial nerve compression...." The ALJ misstated the evidence when she stated Dr. Q opined that the right radial nerve compression was not related to the (date of injury), injury. While the ALJ can accept or reject in whole or in part Dr. Q's opinion, the ALJ's decision in this case is based, in part, on a misstatement of the medical evidence in the record. Accordingly, we reverse the ALJ's determination that the (date of injury), compensable injury does not extend to right radial nerve compression and we remand the issue of whether the (date of injury), compensable injury extends to right radial nerve compression to the ALJ for further action consistent with this decision.

## **SUMMARY**

We affirm the ALJ's determination that the compensable injury of (date of injury), does not extend to a right 4th metacarpal fracture, right ulnar nerve entrapment, or right epicondylitis.

We reverse the ALJ's determination that the compensable injury of (date of injury), does not extend to right radial nerve compression and remand the issue of whether the compensable injury of (date of injury), extends to right radial nerve compression to the ALJ for further action consistent with this decision.

### **REMAND INSTRUCTIONS**

On remand the ALJ is to correct the misstatement regarding Dr. Q's extent-of-injury opinion. The ALJ shall consider all of the evidence and make a determination whether the (date of injury), compensable injury extends to right radial nerve compression that is supported by the evidence.

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.**

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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