

APPEAL NO. 191874-s
FILED DECEMBER 5, 2019

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 September 16, 2019, with the record closing on September 19, 2019, 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 (date of injury), compensable injury does not extend to lumbar spondylosis at L3-S1, lumbar disc bulges at L3-4 and L4-5, retrolisthesis at L5-S1, lumbar stenosis with neurogenic claudication at L2-S1, lumbar spine spondylosis with radiculopathy at L2-S1, right hip osteoarthritis, right hip labral tear, or right hamstring tear; (2) the appellant (claimant) reached maximum medical improvement (MMI) on July 26, 2018; (3) the claimant's impairment rating (IR) is six percent; (4) the first certification of MMI and assigned IR from (Dr. B) on October 17, 2018, became final under Section 408.123 and 28 TEX. ADMIN. CODE § 130.12 (Rule 130.12); and (5) the claimant did not have disability from January 21 through May 14, 2019. The claimant appealed, disputing all the ALJ's determinations. The respondent (self-insured) responded, urging affirmance of the ALJ's determinations.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated, in part, that the self-insured has accepted an (date of injury), compensable injury in the nature of a right shoulder sprain, lumbar strain, and right hip contusion and that the Texas Department of Insurance, Division of Workers' Compensation appointed (Dr. P) as the designated doctor to address the issues of MMI, IR, extent of injury, return to work, and disability. The claimant was injured when he slipped and fell while working as a water treatment operator.

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).

FINALITY AND MMI/IR

The ALJ's determinations that: (1) the first certification of MMI and assigned IR from Dr. B on October 17, 2018, became final under Section 408.123 and Rule 130.12; (2) the claimant reached MMI on July 26, 2018; and (3) the claimant's IR is six percent are supported by sufficient evidence and are affirmed.

EXTENT OF INJURY

Right Hip Labral Tear and Right Hamstring Tear

The ALJ determined that the (date of injury), compensable injury does not extend to a right hip labral tear or right hamstring tear. The ALJ explained in the Discussion portion of her decision that the extent-of-injury conditions at issue are sufficiently complex as to require expert medical evidence to establish a causal connection to the compensable injury. See *City of Laredo v. Garza*, 293 S.W.3d 625 (Tex. App.-San Antonio 2009, no pet.) citing *Guevara v. Ferrer*, 247 S.W.3d 662 (Tex. 2007). We agree with the ALJ regarding expert evidence for the conditions at issue in this case. However, as stated above, we have affirmed the ALJ's determination that the first certification of MMI and assigned IR from Dr. B on October 17, 2018, became final under Section 408.123 and Rule 130.12.

Section 401.011(24) defines IR as "the percentage of permanent impairment of the whole body resulting from a compensable injury." Rule 130.1(c)(1) states, in part, that an IR is the percentage of permanent impairment of the whole body resulting from the current compensable injury. Because the definition of IR establishes that an IR is the percentage of impairment received for the compensable injury, any condition included in the six percent IR, which has become final, was for the compensable injury. See *also* Appeals Panel Decision (APD) 132055, decided October 24, 2013, in which the Appeals Panel indicated that any conditions included in an IR that becomes final pursuant to Section 408.123 and Rule 130.12 are part of the compensable injury.

Dr. B, a doctor selected by the treating doctor to act in his place, indicated in his October 17, 2018, report under "assessment" that the conditions he considered and rated are a right hip contusion/sprain and labral tear, lumbar strain, right hamstring tear, and right shoulder strain. As Dr. B's six percent IR, which has become final pursuant to Section 408.123 and Rule 130.12, included a rating for the conditions of right hip labral tear and right hamstring tear, we hold that the compensable injury extends to a right hip labral tear and right hamstring tear.

Our holding should not be construed as limiting claimants from expanding on what is included in the compensable injury. We acknowledge that injuries can evolve over time and that claimants may claim that additional injuries or conditions are

compensable even after an IR becomes final. See APD 040150-s, decided March 8, 2004.

We reverse that portion of the ALJ's determination that the (date of injury), compensable injury does not extend to a right hip labral tear and a right hamstring tear, and we render a new decision that the (date of injury), compensable injury does extend to a right hip labral tear and a right hamstring tear.

Additionally, we note that although the ALJ states in the Discussion portion of her decision that "[the] [c]laimant did not offer expert evidence supporting a causal link between the mechanism of injury and the disputed conditions," Dr. P, the designated doctor, provided a detailed analysis supporting the causation of the right hip labral tear and right hamstring tear in his report dated August 27, 2019. Regarding the right hip labral tear, Dr. P stated that the claimant's injury includes him slipping and falling directly on his right side and "[g]iven the amount of force directly placed on his right hip and the reliance of the anterior portion of the labrum to absorb this force gives the mechanism a likely cause of the injuries seen on the MRI...[g]iven the consistent mechanism, subjective complaints, objective findings in multiple exams, and numerous opinions of the inclusion of this diagnosis, I believe that it is medically probable that the fall on [(date of injury)] was a direct cause of the anterior-superior labral tear." Regarding the right hamstring tear, Dr. P stated that "[t]his action would have likely caused accelerated extension of his legs out from under him causing a severe load of stretch on the hamstring tendons and their bony attachments...[g]iven the MRI findings with [the] radiologist's impression of common hamstring tear/avulsion in conjunction with the mechanism of his injury I believe that it is within medical probability that his injury on [(date of injury)] was a direct cause of the right hamstring tear."

Remaining Disputed Conditions

The ALJ also determined that the (date of injury), compensable injury does not extend to lumbar spondylosis at L3-S1, lumbar disc bulges at L3-4 and L4-5, retrolisthesis at L5-S1, lumbar stenosis with neurogenic claudication at L2-S1, lumbar spine spondylosis with radiculopathy at L2-S1, and right hip osteoarthritis. Nowhere in Dr. B's Report of Medical Evaluation (DWC-69) or his narrative report did he consider or rate these conditions. The ALJ noted that lumbar spondylosis at L3-S1, lumbar disc bulges at L3-4 and L4-5, retrolisthesis at L5-S1, lumbar stenosis with neurogenic claudication at L2-S1, lumbar spine spondylosis with radiculopathy at L2-S1, and right hip osteoarthritis are conditions requiring expert medical evidence to establish a causal connection with the compensable injury, and as noted above, we agree. The ALJ's determination that the compensable injury does not extend to these conditions is supported by sufficient evidence. Therefore, we affirm that portion of the ALJ's extent-

of-injury determination that the (date of injury), compensable injury does not extend to lumbar spondylosis at L3-S1, lumbar disc bulges at L3-4 and L4-5, retrolisthesis at L5-S1, lumbar stenosis with neurogenic claudication at L2-S1, lumbar spine spondylosis with radiculopathy at L2-S1, and right hip osteoarthritis.

DISABILITY

The ALJ's determination that the claimant did not have disability from January 21 through May 14, 2019, is supported by sufficient evidence and is affirmed. The claimant claimed disability during this period because he was off work due to recovering from lumbar surgery. The claimant underwent lumbar surgery on January 21, 2019, and the operative report of that date indicates that the pre and post-operative diagnosis was lumbar stenosis with neurogenic claudication. The claimant underwent a second surgery on January 25, 2019, and the operative report of that date indicates that the pre and post-diagnosis was lumbar spondylosis with radiculopathy. As noted above, we affirmed the ALJ's determination that these conditions are not a part of the compensable injury. Therefore, the claimant's inability to work during this period was due to surgeries for non-compensable conditions and not due to the compensable injury.

SUMMARY

We affirm the ALJ's determination that the first certification of MMI and assigned IR from Dr. B on October 17, 2018, became final under Section 408.123 and Rule 130.12.

We affirm the ALJ's determination that the claimant reached MMI on July 26, 2018.

We affirm the ALJ's determination that the claimant's IR is six percent.

We affirm that portion of the ALJ's extent-of-injury determination that the (date of injury), compensable injury does not extend to lumbar spondylosis at L3-S1, lumbar disc bulges at L3-4 and L4-5, retrolisthesis at L5-S1, lumbar stenosis with neurogenic claudication at L2-S1, lumbar spine spondylosis with radiculopathy at L2-S1, and right hip osteoarthritis.

We reverse that portion of the ALJ's extent-of-injury determination that the (date of injury), compensable injury does not extend to a right hip labral tear and a right hamstring tear, and we render a new decision that the (date of injury), compensable injury does extend to a right hip labral tear and a right hamstring tear.

We affirm the ALJ's determination that the claimant did not have disability from January 21 through May 14, 2019.

The true corporate name of the insurance carrier is **CITY OF ARLINGTON (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

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Cristina Beceiro
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge