

APPEAL NO. 240341  
FILED MAY 9, 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 January 31, 2024, with the record closing on February 9, 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 of (date of injury), extends to right knee anterior cruciate ligament rupture; (2) the compensable injury of (date of injury), does not extend to aggravation of degenerative tearing of the right knee medial meniscus, right knee aggravation of posterior horn lateral meniscus tear, right knee joint effusion, or aggravation of degenerative right knee arthritis; (3) the respondent/cross-appellant (claimant) has not reached maximum medical improvement (MMI); (4) because the claimant has not reached MMI, an impairment rating (IR) cannot be assigned at this time; (5) the claimant had disability from December 9, 2022, through the date of the CCH resulting from an injury sustained on (date of injury); and (6) the Texas Department of Insurance, Division of Workers' Compensation (Division) should not contact the designated doctor, (Dr. R), to resolve the extent-of-injury issue regarding the designated doctor's report dated April 3, 2023, pursuant to 28 Tex. Admin. Code § 127.20 (Rule 127.20).

The appellant/cross-respondent (self-insured) appealed, disputing the ALJ's extent-of-injury determination in favor of the claimant, as well as the ALJ's MMI, IR, and disability determinations. The claimant responded, urging affirmance of those determinations. The claimant cross-appealed, disputing the ALJ's extent-of-injury determination against him, as well as the ALJ's determination that the Division should not contact Dr. R to resolve the extent-of-injury issue regarding the designated doctor's April 3, 2023, report pursuant to Rule 127.20. The appeal file does not contain a response from the self-insured to the claimant's cross-appeal.

DECISION

Affirmed in part and reversed and remanded in part.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury), that extends to at least a right knee sprain, right knee strain, left wrist sprain, and left wrist strain. The claimant was injured on (date of injury), when his right foot slipped on plastic pellets and he fell into a drain.

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).

### **EXTENT OF INJURY**

The ALJ's determinations that the compensable injury of (date of injury), extends to right knee anterior cruciate ligament rupture but does not extend to aggravation of degenerative tearing of the right knee medial meniscus, right knee aggravation of posterior horn lateral meniscus tear, right knee joint effusion, or aggravation of degenerative right knee arthritis are supported by sufficient evidence and are affirmed.

### **MMI/IR**

The ALJ's determinations that the claimant has not reached MMI, and, because the claimant has not reached MMI, an IR cannot be assigned, are supported by sufficient evidence and are affirmed.

### **CONTACTING DR. R PURSUANT TO RULE 127.20**

The ALJ's determination that the Division should not contact the designated doctor, Dr. R, to resolve the extent-of-injury issue regarding the April 3, 2023, report pursuant to Rule 127.20 is supported by sufficient evidence and is affirmed.

### **DISABILITY**

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. 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 disability issue as agreed to by the parties at the CCH reflects the disputed issue was whether the claimant had disability from December 9, 2022, through the present. Although the ALJ made a conclusion of law and a decision that the claimant had disability from December 9, 2022, through the date of the CCH resulting from an injury sustained on (date of injury), the decision contains no findings of fact on the disability issue, and therefore does not comply with Section 410.168 and Rule 142.16. Accordingly, we reverse the ALJ's decision as being incomplete and we remand the issue of whether the claimant had disability from December 9, 2022, through the date of the CCH for further action consistent with this decision.

## **SUMMARY**

We affirm the ALJ's determination that the compensable injury of (date of injury), extends to right knee anterior cruciate ligament rupture.

We affirm the ALJ's determination that the compensable injury of (date of injury), does not extend to aggravation of degenerative tearing of the right knee medial meniscus, right knee aggravation of posterior horn lateral meniscus tear, right knee joint effusion, or aggravation of degenerative right knee arthritis.

We affirm the ALJ's determination that the claimant has not reached MMI.

We affirm the ALJ's determination that, because the claimant has not reached MMI, an IR cannot be assigned at this time.

We affirm the ALJ's determination that the Division should not contact the designated doctor, Dr. R, to resolve the extent-of-injury issue regarding the April 3, 2023, report pursuant to Rule 127.20.

We reverse the ALJ's decision as being incomplete and we remand the issue of whether the claimant had disability from December 9, 2022, through the date of the CCH resulting from an injury sustained on (date of injury), for further action consistent with this decision.

## **REMAND INSTRUCTIONS**

On remand the ALJ is to make findings of fact, conclusions of law, and a decision whether the claimant had disability from December 9, 2022, through the date of the CCH resulting from an injury sustained on (date of injury).

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 **(a certified self-insured)** and the name and address of its registered agent for service of process is

**(NAME)**  
**(ADDRESS)**  
**(CITY), TEXAS (ZIP CODE).**

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Carisa Space-Beam  
Appeals Judge

CONCUR:

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Cristina Beceiro  
Appeals Judge

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Margaret L. Turner  
Appeals Judge