

APPEAL NO. 240429
FILED JUNE 3, 2024

This appeal arises pursuant to the Texas Workers' Compensation Act, Tex. Lab. Code Ann. § 401.001 *et seq.* (1989 Act). An expedited contested case hearing was held on February 22, 2024, with the record closing on February 27, 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) (Dr. S) was appointed as the designated doctor in accordance with Section 408.0041¹ and Texas Department of Insurance, Division of Workers' Compensation (Division) Rules; and (2) the first certification of maximum medical improvement (MMI) and assigned impairment rating (IR) from (Dr. R) on September 12, 2023, did not become final under Section 408.123 and 28 Tex. Admin. Code § 130.12 (Rule 130.12). The appellant (carrier) appealed the ALJ's determinations. The appeal file does not contain a response from the respondent (claimant) to the carrier's appeal.

DECISION

Reversed and remanded for reconstruction of the record.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury), that extends to at least second degree burns of the neck, trunk, buttock, right ear, multiple sites of the left shoulder and upper limb, multiple sites of the right shoulder and upper limb, multiple left fingers, multiple right fingers, left thumb, right thumb, left lower leg, right lower leg, and atrial fibrillation. The claimant was injured on (date of injury), while trying to unclog a scrubber pump with other coworkers. The claimant's supervisor told them to take off a discharge line from the pump, and when they did the pump exploded.

The ALJ's decision and order states that the following exhibits were admitted into evidence: ALJ's Exhibits 1 through 4; claimant's Exhibits 1 through 9, and carrier's Exhibits A through H. The ALJ noted in the discussion portion of the decision that the record was held open, in part, because Dr. R's report was incomplete; specifically, Dr. R stated he used the Figure 1 worksheets in calculating the claimant's upper extremity (UE) IR, but the reports in evidence did not include those worksheets. The ALJ stated that Dr. R was contacted to obtain those worksheets, which were obtained on February 22, 2024, and provided to the parties for their responses. The ALJ admitted those worksheets and emails from the parties as ALJ's Exhibits 3 and 4.

The ALJ noted the following in his discussion:

¹ We note the ALJ referenced this as Section 408.041 throughout the decision.

[Dr. R] used the Figure 1 worksheets to help him calculate the [UE IRs]. In his report, he measured the left shoulder adduction as 50[°] and the abduction as 70[°]. . . . However, on his worksheet, he calculated the claimant's [IR] using 60[°] of adduction and 50[°]of abduction. . . . He made additional errors when transposing range of motion measurements from his report to the Figure 1 worksheet for the right shoulder. These mistakes resulted in significant errors in calculating the [IR].

The case file forwarded to us for review contains two copies of Figure 1 worksheets for the claimant's left UE, but does not contain any Figure 1 worksheets for the right UE, which were relied upon by the ALJ in making his finality determination. Because the record is incomplete, it must be remanded for the addition or reconstruction of the missing exhibits. See Appeals Panel Decision (APD) 030543, decided April 18, 2003.

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 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.**

Carisa Space-Beam
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Margaret L. Turner
Appeals Judge