

APPEAL NO. 240647
FILED JUNE 21, 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 March 5, 2024, with the record closing on March 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) the compensable injury extends to lumbar radiculopathy and lumbar facet syndrome; (2) the compensable injury does not extend to a lumbar disc herniation at L5-S1; (3) the respondent (claimant) has not reached maximum medical improvement (MMI); and (4) because the claimant has not reached MMI, an impairment rating (IR) cannot be assigned at this time. The appellant (carrier) appealed the ALJ's extent-of-injury determination in favor of the claimant, as well as the ALJ's MMI and IR determinations. The claimant responded, urging affirmance of the appealed determinations. The ALJ's determination that the compensable injury does not extend to a lumbar disc herniation at L5-S1 was not appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed in part, reversed by striking 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 lumbar sprain and lumbar strain, and the Texas Department of Insurance, Division of Workers' Compensation (Division) appointed (Dr. H) as the designated doctor on the issues of MMI, IR, and extent of injury. The claimant was injured on (date of injury), while picking up a heavy sheet of metal and putting it into a cart.

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

That portion of the ALJ's determination that the compensable injury extends to lumbar facet syndrome is supported by sufficient evidence and is affirmed.

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. 28 Tex. Admin. Code § 142.16 (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 extent-of-injury issue as agreed to by the parties at the CCH and contained in the Benefit Review Conference report reflects that the disputed issue was whether the compensable injury of (date of injury), extends to, in part, lumbar radiculopathy at L5-S1. However, Issue Statement No. 1 incorrectly identifies this condition as lumbar radiculopathy, and the ALJ made a finding of fact, conclusion of law, and a determination for lumbar radiculopathy rather than lumbar radiculopathy at L5-S1. We reverse that portion of the ALJ's determination that the compensable injury extends to lumbar radiculopathy as exceeding the scope of the issue. The ALJ's decision contains no findings of fact, conclusions of law, or a decision on lumbar radiculopathy at L5-S1, which was a condition properly before the ALJ to resolve, 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 compensable injury of (date of injury), extends to lumbar radiculopathy at L5-S1 to the ALJ for further action consistent with this decision.

MMI/IR

Because we have reversed and remanded a portion of the extent-of-injury issue to the ALJ, we also reverse the ALJ's determinations that the claimant has not reached MMI, and, because the claimant has not reached MMI, an IR cannot be assigned at this time. We remand the issues of MMI and IR to the ALJ for further action consistent with this decision.

SUMMARY

We affirm that portion of the ALJ's determination that the compensable injury of (date of injury), extends to lumbar facet syndrome.

We reverse by striking that portion of the ALJ's determination that the compensable injury of (date of injury), extends to lumbar radiculopathy as exceeding the scope of the issue.

We reverse the ALJ's decision as being incomplete, and we remand the issue of whether the compensable injury of (date of injury), extends to lumbar radiculopathy at L5-S1.

We reverse the ALJ's determination that the claimant has not reached MMI, and we remand the issue of MMI to the ALJ for further action consistent with this decision.

We reverse the ALJ's determination that because the claimant has not reached MMI, an IR cannot be assigned at this time, and we remand the issue of IR to the ALJ 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 on whether the compensable injury extends to lumbar radiculopathy at L5-S1 that is supported by the evidence.

Dr. H is the designated doctor in this case. If a new certification is necessary, on remand the ALJ is to determine whether Dr. H is still qualified and available to be the designated doctor. If Dr. H is no longer qualified and available to serve as the designated doctor and another designated doctor is necessary, then another designated doctor is to be appointed.

The ALJ is to notify the designated doctor that the compensable injury extends to a lumbar sprain, lumbar strain, and lumbar facet syndrome, but does not extend to a lumbar disc herniation at L5-S1. The ALJ is also to notify the designated doctor whether the compensable injury extends to lumbar radiculopathy at L5-S1.

The ALJ is to request the designated doctor give an opinion on the claimant's date of MMI and rate the entire compensable injury in accordance with the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000) (AMA Guides) considering the medical record and the certifying examination. The parties are to be provided with the designated doctor's new certification and to be allowed an opportunity to respond. The ALJ is then to make a determination of MMI and IR consistent with this decision.

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 **FRANK WINSTON CRUM INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH SAINT PAUL STREET, SUITE 2900
DALLAS, TEXAS 75201-4234.**

Carisa Space-Beam
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Margaret L. Turner
Appeals Judge