

APPEAL NO. 070532
FILED MAY 22, 2007

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, 2007. The disputed issues were:

1. Did the respondent (claimant) sustain a compensable injury on _____?
2. Did the claimed injury occur while the claimant was in a state of intoxication, as defined in TEX. LABOR CODE ANN. Section 401.013, thereby relieving the carrier of liability for compensation?
3. Does the claimant have disability resulting from an injury sustained on _____, and if so, for what period(s)?

The hearing officer resolved the disputed issues by deciding that:

Claimant did sustain a compensable injury on _____.
Claimant has had disability resulting from an injury sustained in the course and scope of his employment on _____, from March 30, 2006, continuing through the date of this hearing.

The claimed injury did occur while Claimant was in a state of intoxication, as defined by TEX. LABOR CODE ANN. Section 401.013. Appellant (carrier) is, thereby, relieved of liability for compensation.

The carrier appeals contending that if the claimant was intoxicated, and the carrier is relieved of liability, the claimant could not, as a matter of law, have sustained a compensable injury as defined in Section 401.011(10), or have disability as defined in Section 401.011(16). The file does not contain a response from the claimant. The determination that the claimed injury did occur while the claimant was in a state of intoxication, as defined by Section 401.013, and therefore the carrier is relieved of liability for compensation was not appealed and has become final pursuant to Section 410.169.

DECISION

Reversed and rendered.

COMPENSABLE INJURY ISSUE

The hearing officer, in her Background Information, comments that the claimant was in the course and scope of his employment at the time he tripped and fell from the

roof of a building while performing his work activities on _____. The hearing officer then concluded that the claimant sustained a compensable injury. We hold that the hearing officer erred in concluding that the claimant sustained a compensable injury because the carrier was not liable for compensation under Section 406.032(1)(A) based on the unappealed determination that the claimant was in a state of intoxication at the time of the injury. Section 401.011(10) defines “compensable injury” as “an injury that arises out of and in the course and scope of employment for which compensation is payable under this subtitle.” Appeals Panel Decision (APD) 060779, decided June 19, 2006. Consequently, we reverse the hearing officer’s determination that the claimant sustained a compensable injury on _____, and render a new decision that the claimant did not sustain a compensable injury because the injury occurred while he was intoxicated and the carrier was relieved of liability.

DISABILITY ISSUE

Section 401.011(16) defines disability as “the inability because of a compensable injury to obtain and retain employment at wages equivalent to the pre-injury wage.” Without a compensable injury the claimant would not have disability as defined by Section 401.011(16). APD 060779, *supra*. We reverse the hearing officer’s determination that the claimant had disability resulting from the injury he sustained on _____, and render a new decision that the claimant did not have disability because he had not sustained a compensable injury.

SUMMARY

We reverse the hearing officer’s determinations that the claimant sustained a compensable injury and had disability. We render a new decision that the claimant did not sustain a compensable injury and that the claimant did not have disability.

According to the information provided by the carrier at the CCH, 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

**RUSSELL OLIVER, PRESIDENT
6210 HIGHWAY 290
AUSTIN, TEXAS, 78723**

Thomas A. Knapp
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge