

APPEAL NO. 071615
FILED OCTOBER 31, 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 July 27, 2007. The hearing officer resolved the disputed issues by deciding that: (1) the respondent 2 (claimant) sustained a compensable injury on _____; (2) the claimant had disability on December 22, 2005, and from (Carrier A's alleged date of injury), through February 28, 2007, but not otherwise through the date of the CCH; (3) both appellant/cross-respondent (Carrier A) and respondent 1/cross-appellant (Carrier Z) provided workers' compensation insurance for the employer applicable to the claimant's injury of _____; and (4) neither Carrier A nor Carrier Z is relieved from liability under Section 409.002 because the claimant did timely notify his employer pursuant to Section 409.001.

Both Carrier A and Carrier Z appealed the hearing officer's determination that both carriers provided workers' compensation insurance coverage for the employer on _____. Carrier A contends that it provided the employer with workers' compensation coverage only for a specific work site, the (VP) project. However, Carrier A alleges that the claimant was injured on (Carrier A's alleged date of injury), at a work site other than the VP project. Carrier Z contends that it provided the employer with workers' compensation coverage for a different work site, the (FBC) project, and that the claimant was injured at the VP project on _____. Also, Carrier Z attached to its appeal an affidavit from its adjuster and a copy of Carrier Z's insurance policy that purports to show that it provided workers' compensation coverage for the employer at a specific work site, the FBC project. Both carriers responded to the other party's appeal. Both carriers contend that they provided the employer with "project-specific" workers' compensation coverage, rather than "general" coverage. Both Carrier A and Carrier Z have included the following language in their respective responses to the appeal and cross-appeal:

Both [Carrier A and Carrier Z] agree that, if the date of injury for the compensable injury is _____, at the [VP] project, then [Carrier A] has sole coverage for that compensable injury. While the carriers disagree on other issues, both agree that under the policies identified by the Hearing Officer at the [CCH], each has project-specific workers' compensation coverage under [Section 406.123], and neither generally insures [the employer] for workers' compensation in Texas under those policies identified by the Hearing Officer.

Claimant responded to both Carrier A's and Carrier Z's appeals, urging affirmance of the hearing officer's decision. The hearing officer's disability and timely notice determinations were not appealed and have become final pursuant to Section 410.169.

DECISION

Affirmed in part and reversed and rendered in part.

FACTUAL SUMMARY

The claimant testified that on _____, he was working at the VP project, a construction work-site, and hurt his low back lifting a 60-pound piece of rebar. The claimant testified that on (Carrier A's alleged date of injury), he was working at a different work site when his right leg gave out. In evidence is a certificate of insurance that shows that Carrier A provided the employer with workers' compensation coverage for the VP project from November 3, 2005, through March 15, 2006. At the CCH, the hearing officer admitted as evidence the Texas Department of Insurance, Division of Workers' Compensation (Division) records (specifically, Texas Compass Employer Coverage) which indicate that Carrier A and Carrier Z provided insurance coverage for the employer (Hearing Officer's Exhibit No. 4). The hearing officer found that on _____, the claimant sustained damage to the physical structure of his body in the course and scope of his employment with the employer at the VP project in Dallas, Texas. The hearing officer determined that both Carrier A and Carrier Z provided workers' compensation insurance for the employer applicable to the claimant's injury of _____.

COMPENSABLE INJURY

The hearing officer's decision that the claimant sustained a compensable injury on _____, is supported by sufficient evidence and is affirmed.

EMPLOYER COVERAGE

Coverage is a threshold requirement for establishing liability of a carrier. See APD 022268-s, decided October 30, 2002. The hearing officer found that on _____, Carrier A provided workers' compensation insurance for the employer for work performed at the VP project in Dallas, Texas, and that on _____, Carrier Z provided workers' compensation insurance for the employer. The hearing officer states in his discussion that "[b]ased on the evidence presented, both Carriers provided workers' compensation insurance for [the employer] applicable to Claimant's injury on _____, [Carrier A] through a project specific policy as shown by exhibits [Carrier Z] offered, and [Carrier Z] through a policy shown by the Division's [Texas Compass Employer Coverage] computer records."

As previously mentioned, both Carrier A and Carrier Z agree, on appeal, that "if the date of injury for the compensable injury is _____, at the [VP] project, then [Carrier A] has sole coverage for that compensable injury." Given that we have affirmed the hearing officer's determination that the claimant sustained a compensable injury on _____, we reverse the hearing officer's determination that both Carrier A and Carrier Z provided workers' compensation insurance for the employer applicable to the

claimant's injury of _____, and we render a decision that Carrier A provided workers' compensation insurance for the employer applicable to the claimant's injury of _____, at the VP project. In view of the basis for our reversal, it is not necessary to consider whether documents submitted with Carrier Z's appeal is newly discovered evidence.

SUMMARY

We affirm the hearing officer's determination that the claimant sustained a compensable injury on _____. We reverse the hearing officer's determination that both Carrier A and Carrier Z provided workers' compensation insurance for the employer applicable to the claimant's injury of _____, and we render a new decision that Carrier A provided workers' compensation insurance for the employer applicable to the claimant's injury of _____, at the VP project.

The true corporate name of insurance carrier A is **ACE AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**ROBIN M. MOUNTAIN
6600 CAMPUS CIRCLE DRIVE EAST, SUITE 300
IRVING, TEXAS 75063.**

The true corporate name of insurance carrier Z is **ZURICH AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**LEO F. MALO
12222 MERIT DRIVE, SUITE 700
DALLAS, TEXAS 75251-2237.**

Veronica L. Ruberto
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Margaret L. Turner
Appeals Judge