

APPEAL NO. 081219
FILED OCTOBER 1, 2008

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 7, 2008. With regard to the three issues before her, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____; that because the claimant did not sustain a compensable injury, he did not have disability; and that the respondent (Travelers Indemnity Company, referred to as Carrier T), does not have liability for benefits prior to the date Carrier T filed notice of denial pursuant to 28 TEX. ADMIN. CODE § 124.3 (Rule 124.3) because Carrier T's notice of denial was timely. The Decision portion of the Decision and Order notes the Texas Department of Insurance, Division of Workers' Compensation (Division) Interlocutory Order (IO) of May 27, 2008, is superseded.

The claimant appealed, contending for the first time on appeal that the Division's records show that the true corporate name of the carrier is Charter Oak Fire Insurance Company (Carrier C), and that Carrier C failed to timely dispute the claimed injury within 15 days after it received written notice of the injury, and therefore is liable for accrued benefits under Rule 124.3. The claimant also appealed the compensable injury and disability issues on a sufficiency of the evidence basis. Carrier T responded, generally urging affirmance without addressing the claimant's contention regarding the correct carrier.

DECISION

Reversed and remanded.

The Hearing Officer's Exhibit No. 1, the Benefit Review Conference (BRC) Report, indicates that notice of the CCH setting was sent to Carrier C. The BRC Report also indicates that the carrier was assisted or represented by "[Carrier C], c/o: Traveler's Companies, Inc./ [adjuster's name]." The hearing officer, at the CCH, announced that she was attaching an IO to the BRC Report. The IO, dated May 27, 2008, orders Carrier C to pay temporary income and medical benefits. The Hearing Officer's Exhibit No. 2, the Insurance Carrier Information Form, lists the carrier's true corporate name as Carrier T. In response to the question on the Insurance Carrier Information Form of whether there is a discrepancy between the carrier's name in the style and the carrier's true corporate name the answer was: "Yes. The [Division] listed the wrong carrier on the CCH Notice." The Hearing Officer's Exhibit Nos. 1 and 2 were admitted without objection or any further discussion.

In evidence at the CCH is a Notice to Carrier of Injury (CS-11) dated November 9, 2007, wherein the Division advised Carrier C that it had received notice of claimant's on-the-job injury. Also in evidence is a Notice of Denial of Compensability/Liability and Refusal to Pay Benefits (PLN-1) dated December 3, 2007, which lists the carrier as

Carrier T and states that Carrier T received notice that the claimant reported an on-the-job injury on November 28, 2007. The hearing officer in her Background Information commented that “[o]n November 9, 2007 [the Division] placed a notice of [c]laimant’s report of injury in the box for [Carrier C] rather than for [Carrier T]” and “[o]n December 3, 2007, [Carrier T] filed a plain notice language form 41 [sic PLN-1]. [Carrier T] noted that it received notice of the claimed injury on November 28, 2007.” The hearing officer made the following Findings of Fact:

1. [Carrier T] received notice of the claimed injury on November 28, 2007.
2. [Carrier T] filed notice of denial on December 3, 2007 which was timely, having been filed within 15 days of receipt of written notice.

There was no evidence, other than the conflicting forms and notices, or argument regarding who the correct carrier is. There is no Employer’s First Report of Injury or Illness (DWC-1) in evidence. The hearing officer’s Decision and Order, although listing Carrier T in the style of the case, was sent to Carrier C but was placed in Carrier T’s Austin representative’s box. The Division’s insurance linking process indicates that the employer had workers’ compensation insurance coverage with Carrier C from November 30, 2006, through November 30, 2007; however, it also indicates that Carrier T may have had a workers’ compensation policy in effect beginning November 30, 2006.

In principle this case is similar to cases where, after the CCH, information was presented that the carrier participating in the hearing did not have coverage. Appeals Panel Decision (APD) 070475, decided May 5, 2007; APD 050802, decided May 18, 2005. Because of the conflicting evidence regarding the correct carrier, we remand the case for the hearing officer to determine who the correct carrier is for the _____, date of injury and, if it is a carrier other than the carrier that was present at the CCH, to hold another hearing with the proper carrier present. On remand the hearing officer is to take official notice of the Division records regarding the proper carrier and admit those records in evidence. The parties are to be allowed the opportunity to present evidence as to the correct carrier in this proceeding.

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 hearing officer, 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.

According to information provided by Carrier T, the true corporate name of the insurance carrier is **TRAVELERS INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
D/B/A CSC – LAWYERS INCORPORATING SERVICE COMPANY
701 BRAZOS STREET, SUITE 1050
AUSTIN, TEXAS 78701.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge