

APPEAL NO. 101334
FILED NOVEMBER 18, 2010

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A consolidated contested case hearing (CCH) was held on August 9, 2010. With regard to (Docket No. 1) the hearing officer resolved the disputed issues by deciding that: (1) the respondent/cross-appellant (claimant) did not sustain a compensable repetitive injury with a date of injury of _____; (2) appellant 1/cross-respondent 1 (carrier F) is relieved of liability under Section 409.002 since the claimant failed to timely notify his employer of a work related _____, date of injury without good cause pursuant to Section 409.001; and (3) since the claimant did not sustain a compensable repetitive injury with a date of injury of _____, there is no disability. With regard to (Docket No. 2) the hearing officer resolved the disputed issues by deciding that: (1) the claimant did not sustain a compensable repetitive injury with a date of injury of (subsequent date of injury), and (2) since the claimant did not sustain a compensable repetitive injury with a date of injury of (subsequent date of injury), there is no disability.

Both carrier F and appellant 2/cross-respondent 2 (carrier S) appealed, requesting a clerical correction, contending for the first time on appeal that both carriers were incorrectly identified in the CCH and that the correct carrier in both dockets is Travelers Indemnity Co. of Connecticut (carrier T). The claimant did not respond to the appeal from carrier F and carrier S.

The claimant appealed Docket No. 2, contending that the hearing officer lacked jurisdiction to determine whether there was a work-related injury on (subsequent date of injury), because the parties had entered into a Benefit Dispute Agreement (DWC-24) that the claimant had a specified period of disability. Carrier S responded, urging affirmance of the hearing officer's determinations. The appeal file did not contain a response to the claimant's appeal from carrier F.

DECISION

Reversed and remanded.

Hearing Officer's Exhibit No. 1, the Benefit Review Conference (BRC) Report for Docket No. 1 and Docket No. 2, indicates that the notice of the CCH setting was sent to carrier T. The BRC report also indicates that carrier T was represented by (attorney). Hearing Officer's Exhibit No. 2 lists the carrier's true corporate name in Docket No. 1 as carrier F and the carrier's true corporate name in Docket No. 2 as carrier S. The parties stipulated that on _____, the employer had workers' compensation insurance coverage with carrier F and that on (subsequent date of injury), the same employer had workers' compensation insurance coverage with carrier S. Hearing Officer's Exhibit Nos. 1 and 2 were admitted without objection or any further discussion.

In evidence at the CCH is the Employer's First Report of Injury or Illness (DWC-1) for both dates of injury in dispute that lists St. Paul Travelers (carrier P) as the workers' compensation insurance company, and a Supplemental Report of Injury (DWC-6) in Docket No. 2 that lists carrier P as the carrier. Additionally, in evidence are a Notice of Denial of Compensability/Liability and Refusal to Pay Benefits (PLN-1) in Docket No. 1 that lists Farmington Casualty Company (carrier C) as the carrier and a PLN-1 in Docket No. 2 that lists carrier S as the carrier. There are various other documents in evidence that list carrier T or carrier P as the carrier.

There was no evidence, other than the conflicting forms and notices, or argument regarding who the correct carrier is. Because of the conflicting evidence regarding the identity of the correct carrier, we remand the case for the hearing officer to determine who the correct carrier is for the _____, date of injury and the (subsequent date of injury), date of injury. See Appeals Panel Decision (APD) 070475, decided May 15, 2007, and APD 081219, decided October 1, 2008. Accordingly, we reverse the hearing officer's determinations in Docket No. 1 that the claimant did not sustain a compensable repetitive injury with a date of injury of _____; carrier F is relieved of liability under Section 409.002 since the claimant failed to timely notify his employer of a work related _____, date of injury without good cause pursuant to Section 409.001; and since the claimant did not sustain a compensable repetitive injury with a date of injury of _____, there is no disability and we remand this case to the hearing officer to determine who the correct carrier is.

We reverse the hearing officer's determinations in Docket No. 2 that the claimant did not sustain a compensable repetitive injury with a date of injury of (subsequent date of injury), and since the claimant did not sustain a compensable repetitive injury with a date of injury of (subsequent date of injury), there is no disability and we remand this case to the hearing officer to determine who the correct carrier is. If the correct carrier in Docket No. 1 or Docket No. 2 is different than the carrier that was present at the CCH, the hearing officer is to hold another hearing with the proper carrier present. On remand, the hearing officer is to take official notice of the Texas Department of Insurance, Division of Workers' Compensation (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.

The true corporate name of insurance carrier F in Docket No. 1 is **FARMERS CASUALTY 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
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701-3218.**

The true corporate name of insurance carrier S in Docket No. 2 is **STANDARD FIRE INSURANCE 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
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701-3218.**

Margaret L. Turner
Appeals Judge

CONCUR:

Cynthia A. Brown
Appeals Judge

Thomas A. Knapp
Appeals Judge