

APPEAL NO. 130472
FILED APRIL 26, 2013

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 8, 2013, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the sole disputed issue by deciding that (decedent) did not sustain a compensable injury on [date of injury], resulting in his death.

The appellant (claimant beneficiary 1) appealed the hearing officer's determination individually and as next friend of minor claimant beneficiaries 2, 3, 4, 5, and 6. The respondent (carrier) responded, urging affirmance. The appeal file contains no response from minor claimant beneficiary 7 to the appeal filed by claimant beneficiary 1.

DECISION

Reversed and remanded.

It was undisputed that the decedent was killed in a motor vehicle accident on [date of injury]. The parties stipulated that proper legal beneficiaries are claimant beneficiaries 1, 2, 3, 4, 5, 6, and 7.

Texas Department of Insurance, Division of Workers' Compensation (Division) records reflect that neither [LP], as next friend of minor claimant beneficiary 7, nor minor claimant beneficiary 7 was duly notified of the Benefit Review Conference held on May 24, 2012, or of the CCH held January 8, 2013. Further, a copy of the hearing officer's Decision and Order was not mailed to either LP or minor claimant beneficiary 7 by the Division, nor was a copy of the appeal filed by claimant beneficiary 1 sent to LP or minor claimant beneficiary 7. We note that the next friend of a minor claimant beneficiary should be duly notified of the time, date, and place of any hearings in the claim as well as should be mailed any decisions and orders and appellate documents in the claim.

Division records do not reflect that claimant beneficiary 7 has filed a Notice of Fatal Injury or Occupational Disease and Claim for Compensation for Death Benefits (DWC-42) with the Division, and there was nothing in evidence to establish whether or not claimant beneficiary 7 did in fact file a DWC-42. However, the evidence established that claimant beneficiary turned 17 years of age on January 13, 2013.

Section 409.007 provides in pertinent part that:

- a. A person must file a claim for death benefits [DWC-42] with the [D]ivision not later than the first anniversary of the date of the employee's death.

b. Failure to file in the time required by Subsection (a) bars the claim unless:

1. the person is a minor or incompetent; or
2. good cause exists for the failure to file a claim under this section.

Pursuant to Section 409.007(a), a DWC-42 must be filed by the first anniversary of the decedent's death, which in this case was December 21, 2012. However, the evidence established that as of the first anniversary of the decedent's death, minor claimant beneficiary 7 was a minor, and that she will be a minor until January 13, 2014. Therefore, pursuant to Section 409.007(b), claimant beneficiary 7's failure to file a DWC-42 (if she has not in fact filed a DWC-42) does not bar her claim. Further, as previously mentioned, both parties stipulated that minor claimant beneficiary 7 is a proper legal beneficiary.

28 TEX. ADMIN. CODE § 140.1(4) (Rule 140.1(4)) states that a “[p]arty to a proceeding” is defined as “[a] person entitled to take part in a proceeding because of a direct legal interest in the outcome.” Necessary parties have been defined as those persons who have such an interest in the controversy that a final judgment or decree cannot be made without affecting their interests. McDonald v. Alvis, 281 S.W.2d 330 (Tex. 1955). See also Appeals Panel Decision (APD) 121315, decided October 29, 2012.

It is apparent from the evidence that both LP, as the next friend of minor claimant beneficiary 7, and minor claimant beneficiary 7 are necessary parties to this proceeding. That the outcome of this proceeding affects minor claimant beneficiary 7's interest is certain, as the hearing officer's decision, if affirmed, will result in the denial of any death benefits to proper legal beneficiaries, which includes minor claimant beneficiary 7. Therefore, LP, as the next friend of minor claimant beneficiary 7, and minor claimant beneficiary 7 are necessary parties to this proceeding and entitled to present evidence on the issue of whether the decedent sustained a compensable injury on [date of injury], resulting in his death. Accordingly, we reverse the hearing officer's decision and remand this case to the hearing officer. Because of lack of notice to and joinder of all necessary parties, we do not reach the merits of claimant beneficiary 1's appeal. We remand this case to the hearing officer for further action consistent with this decision.

REMAND INSTRUCTIONS

On remand, the hearing officer is to ensure that proper service and notice of hearings is sent to all necessary and proper parties: claimant beneficiary 1, individually and as next friend of minor claimant beneficiaries 2, 3, 4, 5, and 6; minor claimant beneficiaries 2, 3, 4, 5, and 6; LP, as next friend of minor claimant beneficiary 7; minor

claimant beneficiary 7; the carrier; and the Subsequent Injury Fund, in order to allow for due process and fairness of these proceedings for those persons who have such an interest in the controversy that a final judgment or decree cannot be made without affecting their interests.

All parties are to be allowed an opportunity to present evidence on the disputed issues and to respond to evidence admitted by official notice of the hearing officer.

On remand, the hearing officer must consider the evidence and make necessary findings of fact and conclusions of law as required by the 1989 Act and Rules as to whether the decedent sustained a compensable injury on [date of injury], resulting in his death.

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 the insurance carrier is **LIBERTY INSURANCE CORPORATION** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701-3218.**

Carisa Space-Beam
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Margaret L. Turner
Appeals Judge