

APPEAL NO. 132913
FILED FEBRUARY 20, 2014

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 November 7, 2013, in [City], Texas, with [hearing officer] presiding as hearing officer. With regard to the issues before him, the hearing officer determined that: (1) the appellant/cross-respondent (claimant) did not sustain a compensable injury on [date of injury]; and (2) the respondent/cross-appellant (carrier) is relieved from liability under Section 409.002 because of the claimant's failure to timely notify her employer pursuant to Section 409.001.

The claimant appealed the hearing officer's determinations, contending that those determinations are against the great weight and preponderance of the evidence, and that the hearing officer misstated the evidence presented at the CCH. The carrier responded, urging affirmance of the hearing officer's determinations. The carrier also filed a cross-appeal, contending that the employer identified in Finding of Fact No. 1.B. is incorrect. The appeal file does not contain a response from the claimant to the carrier's cross-appeal.

DECISION

Reversed and remanded.

The parties stipulated at the CCH that "[o]n [incorrect date of injury], [the] [c]laimant was the employee of [AHI], Employer." We note that Finding of Fact No. 1.B. identifies the date as [date of injury], which, although is the correct date of injury, that is not the date the parties stipulated to on the record.

The carrier contended that the employer identified in Finding of Fact No. 1.B. is incorrect. The carrier stated that it discovered after the CCH that the correct employer in this case is [HCT], not [AHI], as stated in the decision.

In Appeals Panel Decision (APD) 050265, decided March 25, 2005, the carrier contended on appeal that the parties stipulated at the CCH to an incorrect date of maximum medical improvement (MMI) by mistake. The Appeals Panel noted that Section 410.166 and 28 TEX. ADMIN. CODE § 147.4(c) (Rule 147.4(c)) provide, in part, that an oral agreement of the parties that is preserved in the record is final and binding on the date made. Rule 147.4(d)(1) further provides, in part, that an oral agreement is binding on a carrier through the final conclusion of all matters relating to the claim, whether before the Texas Department of Insurance, Division of Workers' Compensation (Division) or in court, unless set aside by the Division or court on a finding of fraud,

newly discovered evidence, or other good and sufficient cause. The Appeals Panel further noted that whether a good and sufficient cause exists is to be determined from the facts as they stand at the time the party seeks to set aside the agreement. APD 950625, decided June 5, 1995. The Appeals Panel reversed and remanded the hearing officer's decision for a determination of whether good cause exists to set aside the parties' stipulation as to the date of MMI. See *also* APD 131996, decided October 10, 2013.

The parties in this case stipulated on the record that on [incorrect date of injury], the claimant was the employee of [AHI]. However, given that there is a question regarding the correct employer, we reverse the hearing officer's Finding of Fact No. 1.B. and we remand the hearing officer's decision for a determination of whether good cause exists to set aside the parties' stipulation that on [incorrect date of injury], the claimant was the employee of [AHI]. If good cause is found to exist, the hearing officer should receive a new stipulation as to who was the claimant's employer on the actual date of injury, which was [date of injury]. Upon a determination of the correct employer in this case, the hearing officer is then to make findings of fact, conclusions of law, and a decision on the issues of this case.

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 **NEW HAMPSHIRE INSURANCE COMPANY** 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 78701-3232.**

Carisa Space-Beam
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Margaret L. Turner
Appeals Judge