

APPEAL NO. 140484
FILED MAY 27, 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 February 6, 2014, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the appellant/cross-respondent (claimant) did not sustain a compensable injury on [date of injury]; (2) the claimant had no disability from July 12 through September 8, 2012; and (3) the respondent/cross-appellant (carrier) is liable for payment of accrued benefits for the period prior to the date the carrier filed its notice of denial pursuant to 28 TEX. ADMIN. CODE § 124.3 (Rule 124.3).

The claimant appealed the hearing officer's determinations that the claimant did not sustain a compensable injury on [date of injury], and that the claimant had no disability from July 12 through September 8, 2012. The claimant contended that the hearing officer's determinations are so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. The claimant also alleged that the hearing officer abused her discretion in admitting Carrier's Exhibit I page one, that the hearing officer misread that document, and that the hearing officer's reliance on a document that she misread in making her determinations renders those determinations erroneous and as such require reversal. The carrier responded to the claimant's appeal and urged affirmance of those determinations. The carrier also cross-appealed the hearing officer's determination that the carrier is liable for payment of accrued benefits for the period prior to the date the carrier filed its notice of denial pursuant to Rule 124.3. The carrier contended it had filed a Notice of Disputed Issue(s) and Refusal to Pay Benefits (PLN-11) to dispute Temporary Income Benefits. The appeal file does not contain a response from the claimant to the carrier's cross-appeal.

DECISION

Affirmed in part and reversed and remanded in part.

The claimant testified that he was injured when he was exposed to benzene while building an enclosure on an open scaffolding at work.

RULE 124.3

The hearing officer's determination that the carrier is liable for payment of accrued benefits for the period prior to the date the carrier filed its notice of denial pursuant to Rule 124.3 is supported by sufficient evidence and is affirmed.

EVIDENTIARY RULING

At the CCH the carrier sought to admit a witness statement from [Mr. S] dated July 16, 2012. The claimant objected on the basis of relevance and an improper attempt to impeach the claimant. The hearing officer admitted the exhibit over the claimant's objection. To obtain a reversal of a judgment based on the hearing officer's abuse of discretion in the admission or exclusion of evidence, an appellant must first show the admission or exclusion was in fact an abuse of discretion, and also that the error was reasonably calculated to cause and probably did cause the rendition of an improper judgment. *Hernandez v. Hernandez*, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ). In determining whether there has been an abuse of discretion, the Appeals Panel looks to see whether the hearing officer acted without reference to any guiding rules or principles. Appeals Panel Decision (APD) 043000, decided January 12, 2005; APD 121647, decided October 24, 2012; *Morrow v. H.E.B., Inc.*, 714 S.W.2d 297 (Tex. 1986). We hold that the hearing officer did not abuse her discretion in admitting this statement. The claimant's remaining contentions regarding this exhibit are discussed below.

COMPENSABLE INJURY AND DISABILITY

Exposure to toxic chemicals through inhalation, and the resultant effect on the body, are matters beyond common experience, and medical evidence should be submitted which establishes the connection as a matter of reasonable medical probability as opposed to a possibility, speculation, or guess. See APD 080787, decided August 12, 2008. See *also* APD 110404, decided May 31, 2011. In the Discussion portion of the decision, the hearing officer notes medical records from [Dr. P], [Dr. S], and [Dr. M], and stated that ". . . a preponderance of the evidence is contrary to [the] [c]laimant having sustained an injury." The hearing officer also correctly noted that an objective urine test was negative and that the claimant's blood studies were all within normal limits.

The hearing officer further stated the following:

[The] [c]arrier presented a persuasive statement from [Mr. S] that contradicted that [the] [c]laimant was injured in an exposure to Benzene at this employer. The statement reported that upon [the] [c]laimant's initial start date on May 22, 2012, that [the] [c]laimant requested a day off to go to court because [the] [c]laimant had a case where he was exposed to Benzene for another employer.

However, the statement in evidence from Mr. S does not discuss the claimant at all; rather, Mr. S' statement is in regards to [Mr. R], the claimant's coworker on the date of injury. The statement reads as follows:

[Mr. R] started working in my crew around May 21, 2012. When he introduced himself to me, the very first day he asked for a day off in advance, he told me he was going to court and said he tought (*sic*) he was going to get a big chunk of money, because he had a case going on because a benzene leak exposure at BP in [City 2]. . . .

The hearing officer based her determination that the claimant did not sustain a compensable injury on [date of injury], and that the claimant did not have disability from July 12 through September 8, 2012, in part on Mr. S' statement. However, the hearing officer has misread Mr. S' statement. We therefore reverse the hearing officer's determination that the claimant did not sustain a compensable injury on [date of injury], and that the claimant did not have disability from July 12 through September 8, 2012, and we remand these issues to the hearing officer for further action consistent with this decision.

SUMMARY

We affirm the hearing officer's determination that the carrier is liable for payment of accrued benefits for the period prior to the date the carrier filed its notice of denial pursuant to Rule 124.3.

We reverse the hearing officer's determination that the claimant did not sustain a compensable injury on [date of injury], and remand this issue to the hearing officer for further action consistent with this decision.

We reverse the hearing officer's determination that the claimant had no disability from July 12 through September 8, 2012, and we remand this issue to the hearing officer for further action consistent with this decision.

REMAND INSTRUCTIONS

On remand the hearing officer is to fully consider the evidence and make a determination on whether the claimant sustained a compensable injury on [date of injury], and whether the claimant sustained disability from July 12 through September 8, 2012. No new evidence is to be taken.

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 Texas Department of Insurance, Division of Workers' Compensation, 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 **INDEMNITY INSURANCE COMPANY OF NORTH AMERICA** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Carisa Space-Beam
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge