

APPEAL NO. 140922
FILED JULY 21, 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 January 21, 2014,¹ and concluded on March 24, 2014, in Houston, Texas, with [hearing officer] presiding as hearing officer. With regard to the issue before her in (Docket No. 1), the hearing officer determined that the [date of injury], compensable injury does not extend to an aggravation of the right index finger proximal phalanx fracture. With regard to the issues before her in (Docket No. 2), the hearing officer determined that: (1) respondent 1/cross-appellant (claimant) sustained a compensable injury on December 17, 2012; (2) the [date of injury], compensable injury does not extend to an aggravation of the right index finger fracture and/or injury to the right index finger; and (3) the claimant had disability during the period at issue only beginning on December 31, 2012, and continuing through August 20, 2013, but had no disability from [date of injury], and continuing through December 30, 2012, and had no disability beginning on August 21, 2013, and continuing through the date of the CCH.

The appellant/cross-respondent (carrier 2) appealed the hearing officer's determinations in Docket No. 2 that the claimant sustained a compensable injury on [date of injury], and that the claimant had disability beginning on December 31, 2012, continuing through August 20, 2013. The claimant responded to carrier 2's appeal, urging affirmance of those determinations. In the same document the claimant cross-appealed the hearing officer's determination that he had no disability beginning on August 21, 2013, and continuing through the date of the CCH. Carrier 2 responded, urging affirmance of that determination. The appeal file does not contain a response from respondent 2 (carrier 1) to either carrier 2's appeal or the claimant's cross-appeal.

Records of the Texas Department of Insurance, Division of Workers' Compensation (Division) reflect that the hearing officer's decision was mailed to the claimant on April 7, 2014. Pursuant to 28 TEX. ADMIN. CODE § 102.5(d) (Rule 102.5(d)), unless the great weight of the evidence indicates otherwise, the claimant was deemed to have received the hearing officer's decision 5 days later. The 5th day after April 7, 2014, was Saturday, April 12, 2014, so pursuant to Rule 102.3(a)(3) the deemed date of receipt of the hearing officer's decision is the next working day, which is Monday, April 14, 2014.

Pursuant to Section 410.202(a) a request for appeal must be filed within 15 days of the date of deemed receipt of the hearing officer's decision. The 15th day after April 14, 2014, excluding Saturdays and Sundays and holidays listed in Government Code §

¹ We note that the hearing officer's decision does not reflect the January 21, 2014, CCH.

662.003, is May 7, 2014. We note that April 18, 2014, Good Friday, and April 21, 2014, San Jacinto Day, are holidays listed in Government Code § 662.003, and both were excluded in the computation of the 15-day period to file an appeal. The cover letter of the claimant's pleading is dated May 9, 2014, was sent by facsimile transmission on May 9, 2014, and was received by the Division on that same date. The claimant's pleading is timely as a response to carrier 2's appeal but is untimely as a cross-appeal because it was not mailed or filed on or before May 7, 2014. The Appeals Panel does not have jurisdiction to review the hearing officer's decision regarding the claimant's cross-appeal because a timely cross-appeal was not filed with the Division by the claimant. Therefore, the hearing officer's determination that the claimant did not have disability from August 21, 2013, and continuing through the CCH has become final pursuant to Section 410.169.

The hearing officer's determination in Docket No. 1 that the [date of injury], compensable injury does not extend to an aggravation of the right index finger proximal phalanx fracture was not appealed. The hearing officer's determinations in Docket No. 2 that the [date of injury], compensable injury does not extend to an aggravation of the right index finger fracture and/or injury to the right index finger, and that the claimant had no disability from [date of injury], and continuing through December 30, 2012, were not appealed. These unappealed determinations have therefore become final pursuant to Section 410.169.

DECISION

Affirmed as reformed.

Section 410.203(b) was amended effective September 1, 2011, to allow the Appeals Panel to affirm the decision of a hearing officer as prescribed in Section 410.204(a)(1). Section 410.204(a) provides, in part, that the Appeals Panel may issue a written decision on an affirmed case as described in subsection (a-1). Subsection (a-1) provides that the Appeals Panel may only issue a written decision in a case in which the panel affirms the decision of a hearing officer if the case: (1) is a case of first impression; (2) involves a recent change in law; or (3) involves errors at the CCH that require correction but do not affect the outcome of the hearing. This case is a situation that requires correction but does not affect the outcome of the hearing.

Regarding Docket No. 2, the claimant testified that he was injured on [date of injury], when the port-a-potty he was in was lifted off of the ground by a forklift.

COMPENSABLE INJURY

The hearing officer's determination that the claimant sustained a compensable injury on [date of injury], is supported by sufficient evidence and is affirmed.

DISABILITY

Conclusion of Law No. 6 and the Decision portion of the decision state the following:

[The] [c]laimant had disability during the period at issue only beginning on December 31, 2012, and continuing through August 20, 2013, but no disability from [date of injury], and continuing through December 30, 2012, and no disability beginning on August 21, 2013, and continuing through the date of the [CCH].²

That portion of the hearing officer's disability determination that the claimant had disability beginning on December 31, 2012, and continuing through August 20, 2013, was timely appealed. As discussed above, the claimant failed to timely file an appeal regarding the dates of disability that were adverse to the claimant.

The hearing officer found in Finding of Fact No. 8 the following:

[The] [c]laimant was not unable to obtain and retain employment at wages equivalent to his preinjury wage due to the compensable injury of [date of injury], only beginning on December 31, 2012, and continuing through August 20, 2013. But not from [date of injury], through December 30, 2012, and not from May 21, 2013, and continuing through the date of the [CCH].

That portion of Finding of Fact No. 8 that the claimant was not unable to obtain and retain employment at wages equivalent to his preinjury wage only beginning December 31, 2012, and continuing through August 20, 2013, is inconsistent with Conclusion of Law No. 6 and the Decision that the claimant had disability beginning December 31, 2012, continuing through August 20, 2013. However, it is clear from the decision that the hearing officer determined that the claimant had disability beginning on December 31, 2012, continuing through August 20, 2013. The record contains sufficient evidence to support that determination. We therefore reform Finding of Fact No. 8 as stated below.

² We note that the hearing officer stated in the Discussion portion of the decision that the claimant submitted Work Status Reports (DWC-73s) through May 20, 2013. However, the hearing officer went on to state that "the credible objective evidence supports the position that [the] [c]laimant had disability from December 31, 2012, through August 20, 2013." The record reflects that the claimant submitted DWC-73s with restricted duties through August 20, 2013.

Additionally, that the portion of Finding of Fact No. 8 that the claimant did not have disability from May 21, 2013, continuing through the date of the CCH conflicts with Conclusion of Law No. 6 and the Decision that the claimant had disability beginning on December 31, 2012, continuing through August 20, 2013. As mentioned above, the hearing officer's determination that the claimant had disability beginning on December 31, 2012, and continuing through August 20, 2013, is supported by sufficient evidence.

For the above reasons, we reform Finding of Fact No. 8 to conform to the evidence, Conclusion of Law No. 6, and the Decision. Finding of Fact No. 8 is reformed to state the following:

The claimant was not unable to obtain and retain employment at wages equivalent to his preinjury wage due to the [date of injury], compensable injury from [date of injury], through December 30, 2012. The claimant was unable to obtain and retain employment at wages equivalent to his preinjury wage due to the [date of injury], compensable injury beginning on December 31, 2012, and continuing through August 20, 2013. The claimant was not unable to obtain and retain employment at wages equivalent to his preinjury wage due to the [date of injury], compensable injury from August 21, 2013, and continuing through the date of the CCH.

The true corporate name of insurance carrier 1 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.**

The true corporate name of insurance carrier 2 is **ACIG 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 78701-3218.**

Carisa Space-Beam
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge