

APPEAL NO. 141284
FILED AUGUST 25, 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 May 16, 2014, in Dallas, Texas, with [hearing officer] presiding as hearing officer.

The disputed issues before the hearing officer were:

1. Did the [appellant/cross-respondent (claimant)] sustain a compensable injury on [date of injury]?
2. Did the [c]laimant have disability resulting from a compensable injury sustained on [date of injury], for the period of October 7, 2012, through the present?
3. Was the claimed injury caused by the [c]laimant's attempt to unlawfully injure another person, thereby relieving the [respondent/cross-appellant (carrier)] of liability for compensation?

The hearing officer determined that: (1) the claimed injury was not caused by the claimant's attempt to unlawfully injure another person, therefore the carrier is not relieved of liability for compensation; (2) the claimant did not sustain a compensable injury on [date of injury]; and (3) the claimant was not unable to obtain and retain employment at wages equivalent to the preinjury wage because of the claimed injury on [date of injury], beginning October 7, 2012, through May 9, 2014, the date of the CCH.

The claimant appealed the hearing officer's determination that she did not sustain a compensable injury on [date of injury], on a sufficiency of the evidence point of error. The claimant also contended that she had disability for the claimed period. The carrier responded to the claimant's appeal, urging affirmance of the appealed determinations. The carrier also filed a cross-appeal, contending that the hearing officer's determination that the claimed injury was not caused by the claimant's attempt to unlawfully injure another person, therefore the carrier is not relieved of liability for compensation is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. The appeal file does not contain a response from the claimant to the carrier's cross-appeal.

DECISION

Affirmed in part and reversed and rendered in part as reformed.

The claimant testified she was injured on [date of injury], when a coworker pushed her.

COMPENSABLE INJURY AND ATTEMPT TO UNLAWFULLY INJURE ANOTHER PERSON

The hearing officer's determinations that the claimed injury was not caused by the claimant's attempt to unlawfully injure another person, therefore the carrier is not relieved of liability for compensation, and that the claimant did not sustain a compensable injury on [date of injury], are supported by sufficient evidence and are affirmed.

DISABILITY

In Finding of Fact No. 5 the hearing officer found that "[t]he claimed injury was a not (sic) cause of [the] [c]laimant's inability to obtain and retain employment at wages equivalent to her preinjury wage beginning on October 7, 2012, through May 9, 2014, the date of the [CCH]." We note that the hearing officer misidentified the date of the CCH as May 9, 2014, when the CCH in fact occurred on May 16, 2014. There is sufficient evidence to establish that the claimed injury was not a cause of the claimant's inability to obtain and retain employment at wages equivalent to her preinjury wage beginning on October 7, 2012, through May 16, 2014, the actual date of the CCH. We therefore reform Finding of Fact No. 5 to state that the claimed injury was not a cause of the claimant's inability to obtain and retain employment at wages equivalent to her preinjury wage beginning on October 7, 2012, through May 16, 2014, the date of the CCH, to reflect the correct date of the CCH.

The hearing officer made a conclusion of law and a decision that state "[the] [c]laimant was not unable to obtain and retain employment at wages equivalent to the pre-injury wage because of the claimed injury on [date of injury], beginning October 7, 2012, through May 9, 2014, the date of the [CCH]." We note that the hearing officer's conclusion of law and decision misidentified the CCH date, which actually occurred on May 16, 2014. The hearing officer did not make a specific conclusion of law or a decision whether the claimant had disability resulting from a compensable injury sustained on [date of injury], for the period of October 7, 2012, through May 16, 2014 the date of the CCH, which was an issue properly before the hearing officer to determine. We therefore reverse the hearing officer's decision as incomplete. As discussed above, the evidence is sufficient to establish that the claimed injury was not a cause of the claimant's inability to obtain and retain employment at wages equivalent to her preinjury wage beginning on October 7, 2012, through May 16, 2014, the date of the CCH. We therefore render a new decision that the claimant did not have disability beginning on October 7, 2012, through May 16, 2014, the date of the CCH, to conform to the evidence and Finding of Fact No. 5 as reformed.

SUMMARY

We affirm the hearing officer's determination that the claimed injury was not caused by the claimant's attempt to unlawfully injure another person, therefore the carrier is not relieved of liability for compensation.

We affirm the hearing officer's determination that the claimant did not sustain a compensable injury on [date of injury].

We reform Finding of Fact No. 5 to state that the claimed injury was not a cause of the claimant's inability to obtain and retain employment at wages equivalent to her preinjury wage beginning on October 7, 2012, through May 16, 2014, the date of the CCH, to reflect the correct date of the CCH.

We reverse the hearing officer's decision as incomplete, and we render a new decision that the claimant did not have disability beginning on October 7, 2012, through May 16, 2014, the date of the CCH, to conform to the evidence and Finding of Fact No. 5 as reformed.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**RICHARD J. GERGASKO
6210 EAST HIGHWAY 290
AUSTIN, TEXAS 78723.**

Carisa Space-Beam
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner

Appeals Judge