

APPEAL NO. 141302
FILED AUGUST 28, 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 5, 2014, in Houston, Texas, with [hearing officer] presiding as hearing officer. The hearing officer determined that: (1) SC (decedent) was not an employee of [Employer], at the time of the claimed injury on [date of injury]; (2) the decedent did not suffer a compensable injury on [date of injury], resulting in his death; and (3) the appellant/cross-respondent (claimant beneficiary) is a proper legal beneficiary of the decedent, but because the [date of injury], injury is not compensable, she is not entitled to death benefits.

The claimant beneficiary appealed the hearing officer's determinations that the decedent was not an employee of [Employer], at the time of the claimed injury on [date of injury], and that the decedent did not suffer a compensable injury on [date of injury], resulting in his death. The claimant beneficiary also appeals the hearing officer's determination that she is not entitled to death benefits because the [date of injury], injury is not compensable. The claimant beneficiary 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 respondent/cross-appellant (carrier) responded to the claimant beneficiary's appeal, urging affirmance of the appealed determinations. The hearing officer's determination that the claimant beneficiary is a proper legal beneficiary of the decedent was not appealed and has become final pursuant to Section 410.169.

The carrier filed a cross-appeal. The carrier contended that the hearing officer erroneously changed some of the language requested by the carrier and granted by the hearing officer in Issue No. 3. The carrier further contended that the hearing officer's determination regarding the issue of the decedent's employer at the time of the claimed injury failed to address all of the employers listed in the issue statement at the CCH. The carrier also requested clerical corrections regarding the proper spelling of the employers listed in the decision. The appeal file does not contain a response from the claimant beneficiary to the carrier's cross-appeal.

DECISION

Affirmed in part and reversed and remanded in part.

It is undisputed that the decedent sustained an injury on [date of injury], which resulted in his death. The evidence reflects that the decedent was cleaning gutters on the home of (Mr. W), the majority owner of [Employer], [Employer], and [Employer] Inc.,

when he fell from a ladder. The parties stipulated that on [date of injury], [Employer], [Employer] and [Employer], provided workers' compensation insurance with the carrier.

Upon the carrier's motion and overruling of the claimant beneficiary's objection, the hearing officer added the following issue as worded in the Decision and Order:

3. Whether the decedent was an employee of [Employer]Inc., [Employer], or [Employer] for the purposes of workers' compensation on [date of injury]?

The issue as read at the CCH was stated as follows:

Was [the decedent] an employee of [Employer], [Employer], or [Employer] for the purposes of the Texas Workers' Compensation Act at the time of his death on [date of injury]?

Issue No. 3 does not reflect the issue as requested and approved by the hearing officer at the CCH. Accordingly, we reform Issue No. 3 to reflect the issue as requested by the carrier and granted by the hearing officer at the CCH.

The hearing officer determined that the decedent was not an employee of [Employer], at the time of the claimed injury on [date of injury]. There is sufficient evidence to support this determination. Therefore, we affirm the hearing officer's determination that the decedent was not an employee of [Employer], at the time of the claimed injury on [date of injury].

However, the issue before the hearing officer, as discussed above, was whether the decedent was an employee of [Employer], [Employer], or [Employer] for the purposes of the Texas Workers' Compensation Act at the time of his death on [date of injury]. The hearing officer failed to make conclusions of law or a decision as to whether the decedent was the employee of [Employer], or [Employer]. We therefore reverse the hearing officer's decision as incomplete, and we remand the issue of whether the decedent was the employee of [Employer], or [Employer], to the hearing officer for further action consistent with this decision.

The hearing officer noted in the Discussion portion of her decision that the evidence in the record supported that the decedent was the employee of [Employer]., but that the preponderance of the evidence indicated that the decedent was not in the course and scope of employment on [date of injury], because he was working for (Mr. R) on one of Mr. R's side businesses.

The hearing officer based her determinations that the decedent did not suffer a compensable injury on [date of injury], resulting in his death, and that the claimant

beneficiary is not entitled to death benefits on her determination that the decedent was not an employee of [Employer]. However, the hearing officer failed to determine whether the decedent was an employee of [Employer], or [Employer], at the time of the injury. We therefore reverse the hearing officer's determinations that the claimant did not suffer a compensable injury on [date of injury], resulting in his death, and because the [date of injury], injury is not compensable, the claimant beneficiary is not entitled to death benefits, and we remand these issues to the hearing officer for further action consistent with this decision.

We note that throughout the Decision and Order the hearing officer refers to the employers as [Employer], [Employer], [Employer], and [Employer]. The carrier contends that the proper employer spellings are as follows: [Employer], and [Employer]. On remand the hearing officer is to determine the correct employer names, including the correct employer spellings.

SUMMARY

We modify Issue No. 3 to reflect the issue as requested by the carrier and granted by the hearing officer at the CCH to read as follows: was the decedent an employee of [Employer]., [Employer]., or [Employer]. for the purposes of the Texas Workers' Compensation Act at the time of his death on [date of injury]?

We affirm the hearing officer's determination that the decedent was not an employee of [Employer], at the time of the claimed injury on [date of injury].

We reverse the hearing officer's decision as being incomplete, and we remand the issue of whether the decedent was the employee of [Employer], or [Employer]., for the purposes of the Texas Workers' Compensation Act at the time of his death on [date of injury].

We reverse the hearing officer's determination that the claimant did not suffer a compensable injury on [date of injury], resulting in his death, and we remand the issue of whether the decedent suffered a compensable injury on [date of injury], resulting in his death to the hearing officer for further action consistent with this decision.

We reverse the hearing officer's determination that because the [date of injury], injury is not compensable, the claimant beneficiary is not entitled to death benefits, and we remand the issue of whether the claimant beneficiary is entitled to death benefits to the hearing officer for further action consistent with this decision.

REMAND INSTRUCTIONS

On remand the hearing officer is to determine the correct employer names, including the correct employer spellings, and make findings of fact, conclusions of law, and a decision consistent with this decision.

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 Appeals Panel Decision 060721, decided June 12, 2006.

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, PRESIDENT
6210 HIGHWAY 290 EAST
AUSTIN, TEXAS 78723.**

Carisa Space-Beam
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge