

APPEAL NO. 142583
FILED JANUARY 14, 2015

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 October 29, 2014, in Austin, Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) Travis McConnell (decedent) sustained a compensable injury on [Date of Injury], resulting in his death; (2) "the claimed injury did not occur while the [decedent] was in a state of intoxication, as defined in [Section 401.013], thereby not relieving the [respondent/cross-appellant (carrier)] of liability for compensation;" and (3) the carrier is not liable for the payment of death benefits from [Date of Injury], to August 5, 2013, resulting from its failure to dispute or initiate the payment of benefits pursuant to 28 TEX. ADMIN. CODE § 132.17(f) (Rule 132.17(f)).

The appellant/cross-respondent (claimant beneficiary) appealed, disputing the hearing officer's determination that the carrier is not liable for the payment of death benefits from [Date of Injury], to August 5, 2013, resulting from its failure to dispute or initiate the payment of benefits pursuant to Rule 132.17(f). The carrier responded, urging affirmance of the determination disputed by the claimant beneficiary.

The carrier cross-appealed, arguing that the evidence was legally insufficient to support the hearing officer's determination that the claimed injury did not occur while the decedent was in a state of intoxication. The carrier also disputed the hearing officer's determination that the decedent sustained a compensable injury on [Date of Injury], resulting in his death. The claimant beneficiary responded, urging affirmance of the determinations disputed by the carrier.

DECISION

Affirmed.

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 by clarification of the hearing officer's decision but does not affect the outcome of the hearing.

The parties stipulated that on [Date of Injury], the decedent sustained an injury at work which resulted in his death. The evidence reflects the decedent was teaching a co-worker how to operate equipment and was struck by an auger. The decedent's death certificate lists the immediate cause of death as traumatic injury to the head and neck.

COMPENSABILITY AND INTOXICATION

The hearing officer's determination that the decedent sustained a compensable injury on [Date of Injury], resulting in his death is supported by sufficient evidence and is affirmed.

The hearing officer's determination that the claimed injury did not occur while the decedent was in a state of intoxication, as defined in Section 401.013 and the carrier is not relieved of liability for compensation is supported by sufficient evidence and is affirmed.

RULE 132.17

Rule 132.17(a) provides that upon being notified of a death resulting from an injury, the carrier shall investigate whether the death was a result of the injury, and if the carrier has not already done so in compliance with Rule 124.3 due to the injury being reported separately, conduct an investigation relating to the compensability of the death, the carrier's liability for the death, and the accrual of benefits. The carrier shall have 60 days from notification of the death or from written notice of the injury that resulted in the death (whichever is greater) to conduct its investigation.

Rule 132.17(f) provides that if the carrier believes that the claimant is eligible to receive death benefits, the carrier shall begin payment of death benefits. If the carrier believes that the claimant is not eligible to receive death benefits, the carrier shall file the notice of dispute of eligibility (notice of dispute) in the form and manner required by Rule 124.2.

Rule 132.17(f) further provides:

- (1) the carrier shall either begin the payment of death benefits or file the notice of dispute not later than the 15th day after the latest of:
 - (A) receiving the claim for death benefits;
 - (B) final adjudication of the carrier's denial of compensability or liability under Rule 124.2 and subsection (b) of this section; or
 - (C) the expiration of the carrier's right to deny compensability/liability under subsection (a) of this section.

Rule 132.17(f)(2) provides that: if the notice of dispute is not filed within 15 days as required, the carrier is liable for and shall pay all benefits that had accrued and were

payable prior to the date the carrier files the notice of dispute and only then is the carrier permitted to suspend payment of benefits.

In the instant case the hearing officer found that the carrier received notice of “this claim” on [Date of Injury], and that the carrier disputed the claim by filing a Notice of Denial of Compensability/Liability and Refusal to Pay Benefits (PLN-1) on August 5, 2013. The hearing officer then determined that the carrier is not liable for the payment of death benefits from [Date of Injury], to August 5, 2013, resulting from its failure to dispute or initiate the payment of benefits pursuant to Rule 132.17(f).

Rule 132.17(f)(1) specifically defines the 15-day period in which the carrier shall either begin the payment of death benefits or file a notice of dispute in a case where death benefits are at issue. In the instant case Rule 132.17(f)(1)(C) applies and the carrier had 15 days from the expiration of the 60-day time period provided in Rule 132.17(a) for investigation, to begin the payment of death benefits or file a notice of dispute. The preamble to the adopted Rule 132.17, found at 25 Tex. Reg. 2110-2113, makes clear that the Texas Department of Insurance, Division of Workers’ Compensation intended to preserve a 60-day time frame for investigating and disputing the compensability of a death. The carrier’s liability for death benefits in this case is not due to its failure to dispute or initiate the payment of benefits pursuant to Rule 132.17(f). However, an affirmance is written in this case to clarify that although the carrier timely disputed the claim pursuant to Rule 132.17(f), the carrier is liable for the payment of death benefits because we have affirmed the hearing officer’s determination that the decedent sustained a compensable injury on [Date of Injury], resulting in his death.

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

**JOSEPH KELLY-GRAY, PRESIDENT
6907 CAPITOL OF TEXAS HIGHWAY NORTH
AUSTIN, TEXAS 78755.**

Margaret L. Turner
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Carisa Space-Beam
Appeals Judge