

APPEAL NO. 151819
FILED OCTOBER 9, 2015

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Contested case hearings (CCH) were held on March 23, 2015, and August 4, 2015, in Fort Worth, Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the respondent (claimant) sustained a compensable injury on (date of injury); (2) the claimant has had disability beginning on October 31, 2014, and continuing through the August 4, 2015, CCH; and (3) the appellant (carrier) is not relieved of liability for compensation because the claimant was not in a state of intoxication at the time of the claimed injury.

The carrier appealed the hearing officer's determinations, contending that the hearing officer's recitation of the evidence in his decision is so inaccurate that it rises to the level of legal and factual reversible error. The claimant responded, urging affirmance of the hearing officer's determinations.

DECISION

Reversed and remanded.

The claimant testified that he injured his left hip when he fell off the end of a loading dock while sweeping.

The hearing officer noted the following in the Discussion portion of his decision:

The evidence reflected that Claimant's supervisor, [Mr. M] transported Claimant to John Peter Smith Hospital [JPSH] to receive medical attention. Claimant testified that he defecated on himself before he arrived at the hospital, whereas [Mr. M], testified that he never smelled any odor that he could attribute to Claimant's defecating in his pants on the way to the hospital. Carrier pointed out that the hospital records did not document that Claimant had defecated in his pants during the time he was examined. Carrier maintained that Claimant's testimony about defecating in his pants on the way to the hospital was an excuse for his alleged refusal to be drug screened at the hospital. The evidence, however, indicated that toxicology tests, including drug screens, were done at the hospital with Claimant's consent, and the results were described in Claimant's exhibits.

However, it was undisputed by the parties that on (date of injury), Mr. M took the claimant to a clinic, Occupational Health Solutions (OHS), and not to JPSH. In

evidence is a medical record from OHS dated (date of injury), noting that the claimant refused to do the drug test, got up from his wheelchair, said he was fine, and was not being cooperative. It was undisputed that the claimant refused to take a drug test at OHS on (date of injury). It was also undisputed that Mr. M never took the claimant to JPSH. The claimant testified, and it was undisputed, that due to the pain in his left hip the claimant went to JPSH on October 31, 2014, and that he submitted to a drug test at the hospital on that date.

The hearing officer erred regarding material facts; that is, the claimant's testimony and undisputed evidence that Mr. M took the claimant to OHS on (date of injury), where he refused to take a drug test, and that the claimant went to JPSH on October 31, 2014, and took a drug test. Because of this misstatement of material facts of evidence, we reverse the hearing officer's determinations that the claimant sustained a compensable injury on (date of injury), and that the carrier is not relieved of liability for compensation because the claimant was not in a state of intoxication at the time of the claimed injury, and we remand those issues to the hearing officer for further action consistent with this decision.

We note that the hearing officer failed to make a conclusion of law regarding whether the claimed injury occurred while the claimant was in a state of intoxication as defined in Section 401.013, from the introduction of a controlled substance or substance analogue as defined by Section 481.002 of the Health and Safety Code, thereby relieving the carrier of liability for compensation. We reverse the hearing officer's decision as incomplete because he did not make a conclusion of law on the issue of intoxication, and we remand the case to the hearing officer to make an appropriate conclusion of law regarding this issue.

Because we have reversed and remanded the issue of whether the claimant sustained a compensable injury on (date of injury), we also reverse the hearing officer's determination that the claimant had disability beginning on October 31, 2014, and continuing through the August 4, 2015, CCH, and we remand the issue of disability to the hearing officer for further action consistent with this decision.

SUMMARY

We reverse the hearing officer's determination that the claimant sustained a compensable injury on (date of injury), and we remand the issue of whether the claimant sustained a compensable injury on (date of injury), to the hearing officer for further action consistent with this decision.

We reverse the hearing officer's determination that the carrier is not relieved of liability for compensation because the claimant was not in a state of intoxication at the

time of the claimed injury, and we remand the issue of whether the claimed injury occurred while the claimant was in a state of intoxication as defined in Section 401.013, from the introduction of a controlled substance or substance analogue as defined by Section 481.002 of the Health and Safety Code, thereby relieving the carrier of liability for compensation to the hearing officer for further action consistent with this decision.

We reverse the hearing officer's decision as incomplete because he did not make a conclusion of law on the issue of intoxication, and we remand the case to the hearing officer to make an appropriate conclusion of law regarding the issue of whether the claimed injury occurred while the claimant was in a state of intoxication as defined in Section 401.013, from the introduction of a controlled substance or substance analogue as defined by Section 481.002 of the Health and Safety Code, thereby relieving the carrier of liability for compensation.

We reverse the hearing officer's determination that the claimant had disability beginning on October 31, 2014, and continuing through the August 4, 2015, CCH, and we remand the issue of disability from October 31, 2014, to August 4, 2015, to the hearing officer for further action consistent with this decision.

REMAND INSTRUCTIONS

On remand the hearing officer is to correct his misstatement of material facts in evidence regarding the claimant's testimony and undisputed evidence that on (date of injury), Mr. M took the claimant to OHS, where he refused to take a drug test, and that the claimant took the drug test on October 31, 2014, at JPSH. The hearing officer shall consider all of the evidence, make findings of fact, and render conclusions of law regarding intoxication, compensability, and disability consistent with this decision. The hearing officer is not to consider additional evidence on remand.

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 **ACE AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
1999 BRYAN STREET, SUITE 900
DALLAS, TEXAS 75201.**

Carisa Space-Beam
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge