

APPEAL NO. 152346
FILED JANUARY 15, 2016

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Contested case hearings were held on September 1, 2015, and October 5, 2015, in Weslaco, Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the decedent, a firefighter, sustained a compensable injury in the form of an occupational disease with a date of injury of (date of injury), which resulted in his death; (2) appellant (self-insured) is not relieved from liability under Section 409.004 because of the decedent's failure to timely file a claim for compensation with the Texas Department of Insurance, Division of Workers' Compensation (Division) within one year of the injury as required by Section 409.003; (3) the self-insured's defenses on compensability are limited to the defenses listed on the Notice of Denial of Compensability/Liability and Refusal to Pay Benefits (PLN-1) filed on November 23, 2011; (4) (child). and (child) are proper legal beneficiaries of (deceased), deceased, entitling them to death benefits; and (5) Matthew Torres is not a proper legal beneficiary of Robert Torres, deceased, and is not entitled to death benefits.

The self-insured appealed the hearing officer's determinations urging that the decedent did not meet the presumption criteria prescribed by TEX. GOVT. CODE ANN. § 607.055 because he did not regularly respond on the scene to calls involving fires or firefighting and that the decedent's type of cancer was not one known to be associated with firefighting. The self-insured further argues that it did not waive its right to assert the affirmative defense of the decedent's failure to file a claim for compensation within one year following the date of injury because the self-insured's PLN-1 was filed less than a year following the alleged date of injury and prior to the affirmative defense becoming known or available. Respondent 1 (claimant beneficiaries) responded, urging affirmance of the disputed determinations.

The hearing officer's determination that (child) is not a proper legal beneficiary of (deceased), deceased, was not appealed and has become final pursuant to Section 410.169.

DECISION

Reversed and remanded.

The parties stipulated that: (1) the decedent met all the applicability requirements of TEX. GOVT. CODE ANN. § 607.052; (2) both the decedent and his

wife, (wife), were non-smokers; and (3) if this claim is compensable, (child), (child), a minor, and (child), a minor, are proper legal beneficiaries of (deceased), deceased.

It is not disputed that the decedent was a firefighter for the self-insured from 1986 until his retirement in 2012, who was diagnosed with adenocarcinoma of the gastric cardia (stomach cancer) in November 2011. He reported the condition to his employer as a work-related occupational disease on (date of injury). The self-insured filed its Employer's First Report of Injury or Illness (DWC-1) on November 11, 2011, and on November 23, 2011, filed a PLN-1 denying the decedent sustained a compensable injury in the course and scope of employment and insisting that he suffered from an ordinary disease of life. The decedent's stomach cancer resulted in his death on November 9, 2012.

Section 409.003 provides that an employee or person acting on the employee's behalf shall file with the Division a claim for compensation for an injury not later than one year after the date on which the injury occurred; or if the injury is an occupational disease, not later than one year after the date on which the employee knew or should have known that the disease was related to the employee's employment. Section 409.004 provides, in part, that failure to file a claim for compensation with the Division as required under Section 409.003 relieves the employer and the carrier of liability unless: (1) good cause exists for failure to file a claim in a timely manner; or (2) the employer or the employer's insurance carrier does not contest the claim.

In his Conclusion of Law No. 4, the hearing officer determined that the self-insured is not relieved from liability under Section 409.004 because of the decedent's failure to timely file a claim for compensation with the Division within one year as required by Section 409.003; however, no findings of fact concerning the issue of good cause for failure to file were made by the hearing officer. In his Conclusion of Law No. 5, the hearing officer determined that the self-insured's defenses to compensability were limited to those listed in its PLN-1 filed on November 23, 2011, but again, no findings of fact concerning the issue are included in the decision.

We reverse the hearing officer's decision as being incomplete and remand the case for the hearing officer to consider and make findings of fact, conclusions of law, and a decision which are supported by the evidence resolving all of the disputed issues in this case. No new evidentiary hearing on remand is necessary. Because we are remanding this case for the hearing officer to make findings of fact, conclusions of law, and a decision supported by the evidence, we do not reach the merits of the disputed issues in this case.

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 Division, 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 **CITY OF MCALLEN (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**JIM DARLING, MAYOR
1300 HOUSTON AVE.
MCALLEN, TEXAS 78501.**

K. Eugene Kraft
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge