

APPEAL NO. 161129

FILED AUGUST 17, 2016

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, 2016, in Midland, 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); and (2) the claimant had disability from October 13, 2015, to the date of the CCH. We note the address for the appellant's (carrier) registered agent for service of process listed in the decision contains typographical errors.

The carrier appealed both of the hearing officer's determinations, contending that those determinations are against the great weight and preponderance of the evidence. The appeal file does not contain a response from the claimant.

DECISION

Reversed and remanded.

It is undisputed that the claimant was injured in a motor vehicle accident on (date of injury). The claimant testified he was driving the company truck from the employer's yard location at 7700 East I-20 to the employer's other yard location at 1109 S. Fairgrounds, when he lost consciousness. The claimant testified the 1109 S. Fairgrounds location is about one mile north of I-20, and to leave that yard to go to 7700 East I-20 one turns south onto FM 715, then turns right onto I-20, and continues east on I-20 to 7700 East I-20. The claimant also testified that he never took the company truck home, to lunch, or on personal errands, and that at the time of the accident he was not traveling to a location other than the employer's yard location at 1109 S. Fairgrounds.

In evidence is a police report dated October 14, 2015, indicating that the claimant was traveling south on FM 715 in the south bound lane, and due to an unknown medical condition the claimant became unconscious while driving and drove off the road into a ditch approximately .25 miles south of I-20. Also in evidence is a map showing the route between the employer's 7700 East I-20 and 1109 S. Fairgrounds locations. That map indicates that I-20 is an interstate that runs east to west, and FM 715 intersects I-20 in a north to south manner.

The hearing officer stated in the Background Information section of the decision that the claimant "was heading South on I-20" when he lost consciousness and drove onto the median, and that the claimant's collision "occurred 400 feet off the route to the 7700 I-20 yard location." The hearing officer has misread the evidence in this case regarding the route on which the claimant was traveling and the distance from the route on which the accident occurred, which we view as a misstatement of material facts in evidence. While the hearing officer can accept or reject in whole or in part the evidence regarding the accident in this case, we must reverse the hearing officer's determination that the claimant sustained a compensable injury on (date of injury), and we remand this issue to the hearing officer for further action consistent with this decision.

Because we have reversed and remanded the issue of compensability, we also reverse the hearing officer's determination that the claimant had disability from October 13, 2015, to the date of the 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 claimant had disability from October 13, 2015, to the date of the CCH, and we remand the issue of disability 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 route on which the claimant was traveling and the distance from the route on which the accident occurred. The hearing officer shall consider all of the evidence and make a determination of whether the claimant sustained a compensable injury on (date of injury), and whether the claimant had disability from October 13, 2015, through the date of the CCH.

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 **LIBERTY INSURANCE CORPORATION** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701-3218.**

Carisa Space-Beam
Appeals Judge

CONCUR:

K. Eugene Kraft
Appeals Judge

Margaret L. Turner
Appeals Judge