

APPEAL NO. 161717
FILED OCTOBER 27, 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 January 7, 2015, in (city), Texas, with (hearing officer) presiding as hearing officer. In Appeals Panel Decision (APD) 160298, decided May 25, 2016, we remanded the case for the hearing officer to: (1) specify the appellant/cross-respondent's (carrier) objection to the addition of whether the carrier waived the right to contest compensability in accordance with Section 409.021; (2) make a determination of whether there was good cause to add the issue of carrier waiver; (3) if the hearing officer determined that there was good cause to add the carrier waiver issue to provide a discussion of his rationale, and then determine whether the carrier waived the right to contest compensability in accordance with Section 409.021; and (4) determine whether the deceased sustained a compensable injury on (date of injury), resulting in his death.

No CCH was held on remand. On remand, the hearing officer determined that: (1) the carrier's specific objection was that the respondent/cross-appellant (claimant beneficiary) failed to establish good cause for adding the waiver issue at the CCH under Section 409.021; and (2) there was not good cause to add the issue of carrier waiver at the CCH. We note that the hearing officer failed to make Conclusions of Law or a Decision as to whether the deceased sustained a compensable injury on (date of injury), resulting in his death.

The carrier appealed the hearing officer's decision, pointing out that the hearing officer failed to make a determination whether the deceased sustained a compensable injury on (date of injury), resulting in his death. The claimant beneficiary cross-appealed the hearing officer's determination that there was not good cause to add the issue of carrier waiver at the CCH and contended the evidence does not support that determination. The carrier responded, urging affirmance of that determination.

DECISION

Affirmed in part and reversed and rendered in part.

The hearing officer's determination that the carrier's specific objection was that the claimant beneficiary failed to establish good cause for adding the waiver issue at the CCH under Section 409.021 is supported by sufficient evidence and is affirmed.

The hearing officer's determination that there was not good cause to add the issue of carrier waiver at the CCH is supported by sufficient evidence and is affirmed.

As noted above, the hearing officer failed to make Conclusions of Law or a Decision as to whether the deceased sustained a compensable injury on (date of injury), resulting in his death, as instructed in APD 160298, *supra*. Therefore, we reverse the hearing officer's decision as incomplete. However, the hearing officer did state in the Discussion portion of the decision and order that "[t]here is insufficient evidence to show that the [deceased] died from heat-related causes, and the preponderance of the evidence establishes that the [deceased] died from a heart attack resulting from the [deceased's] condition as described by (Dr. B)." The hearing officer also found in Finding of Fact No. 4 that on (date of injury), the deceased's death was due to a heart attack unrelated to his job duties or employment. Given the hearing officer's Discussion, finding of fact, and determination that the claimant beneficiary failed to establish good cause for adding the carrier waiver issue at the CCH under Section 409.021 that has been affirmed as supported by the evidence, we render a new decision that the deceased did not sustain a compensable injury on (date of injury), resulting in his death.

SUMMARY

We affirm the hearing officer's determination that the carrier's specific objection was that the claimant beneficiary failed to establish good cause for adding the waiver issue at the CCH under Section 409.021.

We affirm the hearing officer's determination that there was not good cause to add the issue of carrier waiver at the CCH.

We reverse the hearing officer's decision as incomplete, and we render a new decision that the deceased did not sustain a compensable injury on (date of injury), resulting in his death.

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
6210 EAST HIGHWAY 290
AUSTIN, TEXAS 78723.**

Carisa Space-Beam
Appeals Judge

CONCUR:

K. Eugene Kraft
Appeals Judge

Margaret L. Turner
Appeals Judge