

APPEAL NO. 180300
FILED MARCH 29, 2018

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 December 12, 2017, in (city), Texas, with (administrative law judge) presiding as the administrative law judge (ALJ). The ALJ resolved the disputed issues by deciding that (1) the date of injury pursuant to Section 408.007, the date the respondent (claimant) knew or should have known that the claimed occupational disease may be related to his employment is (date of injury); (2) the claimant sustained a compensable injury in the form of an occupational disease with a date of injury of (date of injury); (3) the claimant timely notified his employer pursuant to Section 409.001; therefore, the appellant (self-insured) is not relieved from liability under Section 409.002; (4) the claimant timely filed 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; therefore, the self-insured is not relieved from liability under Section 409.004; and (5) the claimant had disability resulting from the claimed injury from December 12, 2016, through December 24, 2016, but for no other period through the date of the CCH.

The self-insured appealed each of the ALJ's determinations listed above as being contrary to the law and evidence. The appeal file contains no response from the claimant.

DECISION

Affirmed as reformed.

It is undisputed that the claimant has been employed as a firefighter for the City of (city) since August, 2002. The claimant testified that, in 2012, he felt a lump in his neck and, for such reason, underwent ultrasound testing and a biopsy which revealed that the lump was a benign thyroid nodule. The claimant indicated that on December 12, 2016, he underwent a surgical procedure to remove the nodule which had recently grown significantly. The nodule was tested and a pathology report generated on (date of injury), diagnosed papillary microcarcinoma of the thyroid.

The ALJ is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence. *Texas Employers Insurance Association v. Campos*, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). As an appellate reviewing tribunal, the Appeals Panel will not disturb challenged factual findings of an ALJ absent legal error, unless they are so against the great weight and preponderance of the evidence as to be

clearly wrong or manifestly unjust. *Cain v. Bain*, 709 S.W.2d 175, 176 (Tex. 1986); *In re King's Estate*, 150 Tex. 662, 244 S.W.2d 660 (1951).

DATE OF INJURY

The ALJ's determination that the date of injury is (date of injury), pursuant to Section 408.007 is supported by sufficient evidence and is affirmed.

TIMELY NOTICE TO EMPLOYER

The ALJ's determination that the claimant timely notified his employer pursuant to Section 409.001 and, therefore, the self-insured is not relieved from liability under Section 409.002 is supported by sufficient evidence and is affirmed.

TIMELY FILING OF A CLAIM

The ALJ's determination that the claimant timely filed a claim for compensation with the Division within one year of the injury as required by Section 409.003 and, therefore, the self-insured is not relieved from liability under Section 409.004 is supported by sufficient evidence and is affirmed.

COMPENSABLE INJURY

The ALJ's determination that the claimant sustained a compensable injury in the form of an occupational disease with a date of injury of (date of injury), is supported by sufficient evidence and is affirmed.

DISABILITY

Section 401.011(16) defines disability as the inability because of a compensable injury to obtain and retain employment at wages equivalent to the pre-injury wage. The ALJ determined that the claimant sustained disability resulting from the compensable injury beginning on December 12, 2016, the date upon which the claimant underwent surgery for removal of the thyroid nodule. The ALJ further determined, however, that the date of the compensable injury is (date of injury), the date the claimant received the diagnosis of papillary microcarcinoma following testing of the nodule and the date the ALJ found the claimant knew or should have known that the disease may be related to his employment.

The self-insured's challenge to the ALJ's disability determination is based, in part, on the argument that disability cannot predate the date of injury. With regard to the starting date of disability, Section 408.082(b) and (c) make clear that accrual of income benefits payable for disability begins "after the date of injury." In Appeals Panel

Decision (APD) 950521, decided May 18, 1995, we determined that temporary income benefits are to be paid for periods of disability beginning on the date of injury. However, employees who sustain occupational disease injuries may obtain medical benefits for treatment related to their compensable injury provided prior to the date determined to be the date of injury. See APD 94991, decided September 7, 1994.

Because the accrual of income benefits is a matter of statute, we reform the ALJ's Conclusion of Law No. 7 and Decision to reflect that the claimant had disability resulting from the compensable injury, from December 12, 2016, through December 24, 2016, but for no other period through the date of the CCH; however, accrual of income benefits did not begin until after the (date of injury), date of injury. See APD 022231, decided October 16, 2002, and APD 022917, decided January 7, 2003.

SUMMARY

We affirm the ALJ's determination that the date of injury is (date of injury), pursuant to Section 408.007.

We affirm the ALJ's determination that the claimant timely notified his employer pursuant to Section 409.001 and, therefore, the self-insured is not relieved from liability under Section 409.002.

We affirm the ALJ's determination that the claimant timely filed a claim for compensation with the Division within one year of the injury as required by Section 409.003 and, therefore, the self-insured is not relieved from liability under Section 409.004.

We affirm the ALJ's determination that the claimant sustained a compensable injury in the form of an occupational disease with a date of injury of (date of injury).

We affirm as reformed the ALJ's determination that the claimant had disability resulting from the claimed injury from December 12, 2016, through December 24, 2016, but for no other period through the date of the CCH; however, accrual of income benefits did not begin until after the (date of injury), date of injury.

The true corporate name of the insurance carrier is **CITY OF BAYTOWN (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**STEPHEN DON CARLOS, MAYOR
2401 MARKET ST.
BAYTOWN, TEXAS 77520.**

K. Eugene Kraft
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge