

APPEAL NO. 130971  
FILED JUNE 11, 2013

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 November 12, 2012, and concluded on February 28, 2013, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issues by decided that: (1) the appellant/cross-respondent (carrier 1) is liable for respondent 2's (claimant) injury sustained on [date of injury]; (2) carrier 1 waived the right to contest the compensability of the claimed injury by not contesting compensability in accordance with Section 409.021; (3) by virtue of carrier 1's waiver the claimant sustained a compensable injury on [date of injury]; (4) the claimant had disability only beginning on December 28, 2010, and continuing through February 21, 2012; (5) respondent 1/cross-appellant (carrier 2) is not liable for the claimant's injury sustained on [date of injury]; and (6) carrier 1 is not entitled to reimbursement from carrier 2.

Carrier 1 appealed all of the hearing officer's determinations. Carrier 2 appealed the hearing officer's determination that by virtue of carrier 1's waiver the claimant sustained a compensable injury on [date of injury]; and that the claimant had disability only beginning on December 28, 2010, and continuing through February 21, 2012. Carrier 1 responded to carrier 2's appeal, and carrier 2 responded to carrier 1's appeal. The appeal file contains no response from the claimant to either carrier 1's appeal or carrier 2's appeal.

DECISION

Affirmed as reformed.

Section 410.203(b) was amended effective September 1, 2011, to allow the Appeals Panel to affirm the decision of a hearing officer as prescribed in Section 410.204(a). Section 410.204(a) provides, in part, that the Appeals Panel may issue a written decision on an affirmed case as described in subsection (a-1). Subsection (a-1) provides that the Appeals Panel may only issue a written decision in a case in which the panel affirms the decision of a hearing officer if the case: (1) is a case of first impression; (2) involves a recent change in law; or (3) involves errors at the CCH that require correction but do not affect the outcome of the hearing. This case is a situation that requires correction but does not affect the outcome of the hearing.

All of the hearing officer's determinations are supported by sufficient evidence and are affirmed. However, as discussed below, the hearing officer's decision requires correction by reformation that will not affect the outcome of the hearing.

The issues reported out of the benefit review conference (BRC) were: (1) “[i]s [carrier 1] or [carrier 2] or are both liable for the claimant’s injury sustained on [date of injury]?”; (2) [d]id the claimant sustain a compensable injury on [date of injury]?”; (3) [d]id the claimant have disability resulting from the [date of injury], compensable injury, and if so, for what period(s)?”; and (4) [i]s [carrier 1] entitled to reimbursement from [carrier 2], and if so, in what amount?”

At the first setting of the CCH on November 12, 2012, carrier 2 requested the hearing officer add the issue of whether carrier 1 waived the right to contest the compensability of the claimed injury by not contesting compensability in accordance with Section 409.021, noting that was its documented position in the BRC report. The hearing officer responded that she would consider adding the issue. The CCH was continued after sending the claimant a 10-day letter because he failed to appear at the CCH. The claimant failed to respond to the 10-day letter, so the CCH was ultimately conducted on February 28, 2013. The hearing officer failed to note in the decision and order that she was adding the waiver issue, but did make findings of fact and conclusions of law on that issue, and determined that carrier 1 waived the right to contest compensability of the claimed injury by not contesting compensability in accordance with Section 409.021. A review of the record reveals that the parties did actually litigate the waiver issue at the CCH.

The parties stipulated that venue is proper in the [City] field office of the Texas Department of Insurance, Division of Workers’ Compensation, and that the claimant was the employee of [Employer] on [date of injury]. The hearing officer’s decision also reflects that the parties entered into a third stipulation: “[o]n [date of injury], Employer provided workers’ compensation insurance with [carrier 1], and [carrier 2].” However, a review of the record reveals that the parties did not enter into this stipulation. Rather, the hearing officer noted on the record that because there was a dispute as to the correct carrier, there would be no stipulation regarding who provided workers’ compensation. We therefore reform the hearing officer’s decision and order by striking stipulation C.

The true corporate name of carrier 1 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.**

The true corporate name of carrier 2 is **AMERICAN GUARANTEE & LIABILITY INSURANCE COMPANY** 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.**

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Carisa Space-Beam  
Appeals Judge

CONCUR:

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Veronica L. Ruberto  
Appeals Judge

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Margaret L. Turner  
Appeals Judge