

APPEAL NO. 132159  
FILED DECEMBER 4, 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 June 6, 2013, and concluded on August 7, 2013, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer determined that: (1) the appellant/cross-respondent (claimant) sustained an injury on [date of injury]; (2) respondent/cross-appellant (carrier) is not liable for benefits for the injury of [date of injury], because [employer] was not the claimant's employer at the time; and (3) the claimant had disability from the injury on [date of injury], from February 25 through February 28, 2013, and from May 3 through June 7, 2013.<sup>1</sup>

The claimant appealed, disputing the hearing officer's determinations that [employer] was not the claimant's employer at the time of the alleged injury. The claimant argues that he was working as an employee for [employer] not an independent contractor. The carrier responded, urging affirmance of the determination disputed by the claimant. The carrier cross-appealed, disputing the hearing officer's determinations that the claimant sustained an injury; the claimant had disability; and that the claimant had good cause for his failure to appear at the June 6, 2013, CCH. The appeal file does not contain a response from the claimant to the carrier's cross-appeal.

DECISION

Affirmed in part as reformed and reversed and rendered in part.

The claimant testified he injured his back while moving a steel frame with a co-worker. Medical records in evidence reflect the claimant was diagnosed with a lumbar sprain, low back pain, and sciatica. We note that in the stated disability issue in the decision and order, the hearing officer misidentifies the date of the alleged injury as January 15, 2013, rather than [date of injury], and misstates the beginning date of disability in dispute as January 16, 2013, rather than January 6, 2013, as certified in the Benefit Review Conference Report. Further, we note that a review of the record reflects that the parties actually stipulated that "[o]n **[date of injury]**, **[employer]** [emphasis added] carried workers' compensation insurance through Service Lloyds Insurance Company, Carrier." We reform stipulation 1B to reflect the parties' actual stipulation

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<sup>1</sup> We note that whether the claimant had good cause for his failure to attend the CCH on June 6, 2013, was a disputed issue. The hearing officer made a finding of fact but failed to make a conclusion of law or decision on this issue.

rather than “[o]n **January 5, 2012, Employer** [emphasis added] carried workers’ compensation insurance through Service Lloyds Insurance Company, Carrier.”

### **GOOD CAUSE FOR FAILURE TO ATTEND THE CCH**

The hearing officer found that the claimant had good cause for his failure to appear at the June 6, 2013, CCH. We review good cause determinations under an abuse of discretion standard. Appeals Panel Decision (APD) 002251, decided November 8, 2000. The hearing officer’s determination will not be set aside unless the hearing officer acted without reference to any guiding rules or principles. See Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986). The hearing officer’s finding that the claimant had good cause for his failure to appear at the June 6, 2013, CCH is supported by sufficient evidence. However, the hearing officer failed to make a conclusion of law or decision on the disputed good cause issue. Accordingly, we reverse the hearing officer’s decision as being incomplete and render a new decision that the claimant had good cause for his failure to appear at the June 6, 2013, CCH.

### **[EMPLOYER] AS EMPLOYER**

The hearing officer’s determination that the carrier is not liable for benefits for the injury of [date of injury], because [employer] was not the claimant’s employer at the time is supported by sufficient evidence and is affirmed.

### **COMPENSABLE INJURY**

Section 401.011(10) defines “[c]ompensable injury” as “an injury that arises out of and in the course and scope of employment for which compensation is payable under this subtitle.” The hearing officer found in Finding of Fact No. 5 that the claimant sustained damage or harm to the physical structure of his body on [date of injury]. That finding is supported by sufficient evidence. The hearing officer in both his conclusion of law and his decision determined that the claimant sustained an injury on [date of injury]. However, the disputed issue was whether the claimant sustained a compensable injury. Compensation is not payable for the injury claimant sustained because the hearing officer found that [employer] was not the claimant’s employer for purposes of the 1989 Act, therefore, he did not sustain a compensable injury. As previously noted, the hearing officer’s determination that the carrier is not liable for benefits for the injury of [date of injury], because [employer] was not the claimant’s employer at the time of the injury was affirmed. Accordingly, we reverse the hearing officer’s decision as being incomplete and render a new decision that the claimant did not sustain a compensable injury on [date of injury].

## **DISABILITY**

The hearing officer found in Finding of Fact No. 6 that the injury of [date of injury], was a cause of the claimant's inability to obtain and retain employment at wages equivalent to his preinjury wage beginning on February 25, 2013, and continuing through February 28, 2013, and from May 3 through June 7, 2013. The period of disability in dispute was January 6, 2013, through the date of the CCH. The hearing officer failed to address the entire period of disability in the disputed issue. However, it is clear the hearing officer was persuaded that the claimant only had disability during the two specific periods he found.

There are two Work Status Reports (DWC-73s) in evidence which reference the dates of disability found by the hearing officer. However, the claimant testified that he returned to work performing a different job with an employer who would work with his limitations on May 29, 2013. The claimant did not provide testimony regarding the wages he earned at the job he had when he returned to work on May 29, 2013. During the CCH, the claimant alleged his claimed period of disability was from January 6 to May 29, 2013. That portion of the hearing officer's disability finding that the injury of [date of injury], was a cause of the claimant's inability to obtain and retain employment at wages equivalent to his preinjury wage beginning on February 25, 2013, and continuing through February 28, 2013, is supported by sufficient evidence. However, that portion of the hearing officer's determination that the injury of [date of injury], was a cause of claimant's inability to obtain and retain employment from May 3 through June 7, 2013, is not supported by the evidence. The evidence supports that the second period of disability found by the hearing officer ended May 29, 2013, when the claimant returned to work.

Disability means the inability to obtain and retain employment at wages equivalent to the preinjury wage because of a compensable injury. Section 401.011(16). As previously noted, we have rendered a decision that the claimant did not sustain a compensable injury on [date of injury]. Accordingly, we reverse the hearing officer's determination that the claimant had disability from the injury on [date of injury], from February 25 through February 28, 2013, and from May 3 through June 7, 2013, and render a new decision that the claimant did not have disability because the claimant did not sustain a compensable injury.

## **SUMMARY**

We reverse the hearing officer's decision as being incomplete and render a new decision that the claimant had good cause for his failure to appear at the June 6, 2013, CCH.

We affirm the hearing officer's determination that the carrier is not liable for benefits for the injury of [date of injury], because [employer] was not the claimant's employer at the time of the claimed injury.

We reverse the hearing officer's decision that the claimant sustained an injury on [date of injury], as being incomplete and render a new decision that the claimant did not sustain a compensable injury on [date of injury], because it was determined [employer] was not the claimant's employer.

We reverse the hearing officer's determination that the claimant had disability from the injury on [date of injury], from February 25 through February 28, 2013, and from May 3 through June 7, 2013, and render a new decision that the claimant did not have disability because the claimant did not sustain a compensable injury.

The true corporate name of the insurance carrier is **SERVICE LLOYDS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**JOSEPH KELLEY-GRAY, PRESIDENT  
6907 CAPITOL OF TEXAS HIGHWAY NORTH  
AUSTIN, TEXAS 78755.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Cristina Beceiro  
Appeals Judge

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Carisa Space-Beam  
Appeals Judge