

APPEAL NO. 171115  
FILED JULY 10, 2017

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 April 3, 2017, with the record closing on April 21, 2017, in (city), 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); (2) the claimed injury did not occur while the claimant was in a state of intoxication, thereby not relieving the appellant (carrier) from liability for compensation; and (3) the claimant had disability resulting from the compensable injury of (date of injury), beginning on May 27, 2016, and continuing through the date of the CCH.

The carrier appealed, arguing that the hearing officer's determinations that: the claimant had a compensable injury; the injury did not occur while the claimant was in a state of intoxication; and the claimant had disability beginning on May 27, 2016, and continuing through the date of the CCH are in error. The carrier contends that the hearing officer failed to apply the statutory presumption of intoxication to the facts of the case. Additionally, the carrier contends that the claimant did not produce evidence that he had the normal use of his mental or physical faculties at the time of the injury and that the evidence did not support the hearing officer's determination that the claimant had disability. The claimant responded, maintaining that the hearing officer's determinations are supported by sufficient evidence and should be affirmed.

**DECISION**

Reversed and remanded.

The claimant testified that he was injured on (date of injury), when he fell approximately 12 feet from scaffolding while working to set up a stage. The claimant was transported by ambulance to the hospital. Medical records in evidence reflect that a urinalysis was performed on the date of injury and that the claimant tested positive for cannabinoids. The records reflect that the results are only preliminary analytical test results and that a more specific alternate chemical method must be used in order to obtain a confirmed analytical result. Additionally, in evidence is a urinalysis performed on June 2, 2016, from another medical facility which reflected that the claimant testified positive for cannabinoids.

**INTOXICATION**

Section 406.032(1)(A) provides that the carrier is not liable for compensation if the injury occurred while the employee was in a state of intoxication. Section

401.013(a)(2)(B) defines intoxication as not having the normal use of mental or physical faculties resulting from the voluntary introduction into the body of a controlled substance or controlled substance analogue, as defined by Section 481.002, of the Health and Safety Code. Section 401.013(c), amended effective September 1, 2005, provides that “[o]n the voluntary introduction into the body of any substance listed under Subsection (a)(2)(B), based on a blood test or urinalysis, it is a rebuttable presumption that a person is intoxicated and does not have the normal use of mental or physical faculties.”

In Appeals Panel Decision (APD) 062507-s, decided January 31, 2007, the Appeals Panel held that a hearing officer erred in failing to make a finding regarding a positive drug screen for amphetamines which resulted in a rebuttable presumption of intoxication for amphetamines, referencing Section 401.013(c). The Appeals Panel also noted that it disagreed with the carrier’s argument that under the 2005 amendment to Section 401.013(c), establishing a rebuttable presumption of intoxication based on a blood test or urinalysis, an injured worker’s lay testimony could not be considered sufficient to overcome the legal presumption of intoxication.

In the instant case, the hearing officer in her discussion of the evidence, referenced the June 2, 2016, urinalysis and stated that the claimant’s urine specimen was tested for cannabinoids and other controlled substances and the claimant tested negative for all controlled substances. However, the June 2, 2016, urinalysis shows a positive result for cannabinoids. The hearing officer additionally stated, in part, that the initial drug screen performed on the date of the injury provided insufficient testing information. The hearing officer found that the evidence concerning drug testing was not persuasive to create a rebuttable presumption that the claimant was intoxicated and did not have the normal use of his mental or physical faculties at the time of the injury event of (date of injury).

Section 401.013(c) refers to a positive drug test based on a blood test or urinalysis but does not specify any other requirements to establish a rebuttable presumption of intoxication. In evidence are two drug tests based on a urinalysis which reflect the claimant tested positive for marijuana. The hearing officer’s failure to apply a rebuttable presumption to the facts of this case is legal error. Therefore, we reverse the hearing officer’s determination that the claimed injury did not occur while the claimant was in a state of intoxication as defined in Section 401.013. We remand the intoxication issue back to the hearing officer for her to apply the correct standard as set out in Section 401.013 by applying the presumption of intoxication under Section 401.013(c) based on the positive urinalysis for cannabinoids/marijuana in evidence.

## **COMPENSABLE INJURY AND DISABILITY**

Since the intoxication issue has been reversed and remanded for the hearing officer to apply the correct legal standard, the hearing officer's determinations that the claimant sustained a compensable injury on (date of injury), and that the claimant had disability resulting from the compensable injury of (date of injury), beginning on May 27, 2016, and continuing through the date of the CCH are also reversed and remanded for a decision consistent with the hearing officer's determination on the intoxication issue on remand.

### **SUMMARY**

We reverse the hearing officer's determination that the claimant sustained a compensable injury on (date of injury), and remand the issue of compensability to the hearing officer.

We reverse the hearing officer's determination that the claimant had disability resulting from the compensable injury of (date of injury), beginning on May 27, 2016, and continuing through the date of the CCH and remand the disability issue to the hearing officer.

We reverse the hearing officer's determination that the claimed injury did not occur while the claimant was in a state of intoxication, thereby not relieving the carrier from liability for compensation and remand the intoxication issue to the hearing officer.

### **REMAND INSTRUCTIONS**

On remand, the hearing officer shall consider all the evidence, make findings of fact and conclusions of law regarding the intoxication, injury and disability issues consistent with this decision and the statute discussed therein.

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 APD 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **NEW YORK MARINE AND GENERAL 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 78701-3218.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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K. Eugene Kraft  
Appeals Judge

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Carisa Space-Beam  
Appeals Judge