

APPEAL NO. 180814
FILED MAY 30, 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 March 12, 2018, in (city), Texas, with (administrative law judge) presiding as the administrative law judge (ALJ). The ALJ resolved the disputed issue by deciding that the respondent (claimant beneficiary) is a proper legal beneficiary of the decedent entitling her to death benefits. The appellant (carrier) appealed, disputing the ALJ's determination. The carrier argues on appeal that the ALJ's decision contains a misstatement of the evidence regarding the filing of the decedent's tax return. The claimant beneficiary responded, urging affirmance of the ALJ's determination.

DECISION

Reversed and remanded.

The parties stipulated that the decedent sustained a fatal injury while in the course and scope of his employment on (date of injury). We note that the decision states Carrier's Exhibits CR-A through CR-F were admitted into evidence; however, Carrier's Exhibit G was also admitted into evidence during the CCH.

The ALJ stated in her discussion that the evidence revealed the claimant beneficiary and decedent "filed taxes jointly." The only tax return in evidence is the decedent's 2006 tax return. Although the tax return notes the claimant beneficiary as a dependent, it also states under the box depicting the dependent's relationship to the decedent as "none." The tax return does not state that the decedent was married and filing jointly. The claimant beneficiary testified at the CCH that the relationship was listed as none because "the tax man" told them to do so, and that the claimant beneficiary had told him she was still technically married to another man at that time. The evidence reflected that the claimant beneficiary was divorced from that man on February 19, 2008. The ALJ has misstated the evidence in this case regarding the filing of the decedent's tax return. We view the ALJ's misstatement of the evidence as a material misstatement of fact. We therefore reverse the ALJ's determination that the claimant beneficiary is a proper legal beneficiary of the decedent entitling her to death benefits, and we remand this case to the ALJ for further action consistent with this decision.

REMAND INSTRUCTIONS

On remand the ALJ is to correct her misstatement of the evidence regarding the filing of the decedent's tax return. The ALJ shall consider the evidence and make a

determination of whether the claimant beneficiary is a proper legal beneficiary of the decedent entitling her to death benefits supported by the evidence.

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 ALJ, 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 Appeals Panel Decision 060721, decided June 12, 2006.

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

**MR. RICHARD GERGASKO, PRESIDENT
6210 HIGHWAY 290 EAST
AUSTIN, TEXAS 78723.**

Carisa Space-Beam
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge