APPEAL NO. 181357
FILED JULY 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 May 2, 2018, 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 appellant (claimant) was not in the course and scope of his employment when involved in a motor vehicle accident (MVA) on (date of injury); (2) because there was no compensable injury, the claimant had no disability; and (3) the respondent (carrier) is not liable for the payment of accrued benefits pursuant to 28 TEX. ADMIN. CODE § 124.3 (Rule 124.3) resulting from its failure to dispute or initiate the payment of benefits within 15 days of the date it received written notice of the injury.

The claimant appealed, disputing all of the ALJ's determinations. The carrier responded, urging affirmance of the ALJ's determinations.

DECISION

Affirmed in part, reformed in part, and reversed and remanded in part.

The parties stipulated, in part, that the claimant was involved in a MVA on (date of injury). The claimant testified that he was returning to the job site after a personal errand to a pharmacy to pick up a prescription when he was involved in a MVA on (date of injury). In evidence are the Employer's First Report of Injury or Illness (DWC-1) dated January 19, 2018, and the Notice of Denial of Compensability/Liability and Refusal to Pay Benefits (PLN-1) dated February 2, 2018. The carrier's PLN-1 was filed with the Texas Department of Insurance, Division of Workers' Compensation (Division) on February 2, 2018.

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).

COURSE AND SCOPE OF EMPLOYMENT

The issue before the ALJ as reflected on the Benefit Review Conference (BRC) Report and as agreed to by the parties is "[w]as the [c]laimant in the course and scope of his employment when involved in a [MVA] on (date of injury)?" The ALJ found that the claimant did not sustain damage or harm to the physical structure of his body while in the course and scope of employment on (date of injury), as a result of the MVA; this finding is supported by sufficient evidence and is affirmed.

We note that the ALJ states in the summary paragraph on page one that the claimant was not in the course and scope of his employment when he was involved in a MVA on (date of injury); however, the ALJ states in the Decision section on page five that the claimant did not sustain a compensable injury on (date of injury). The ALJ also failed to make a conclusion of law of whether the claimant was in the course and scope of his employment on the date of injury, which was an issue properly before her to determine. Rather, in Conclusion of Law No. 3, she states (as she did in the Decision section) that the claimant did not sustain a compensable injury on (date of injury). We correct the Decision section on page five and Conclusion of Law No. 3 to correspond to the issue as stated and as determined by the ALJ. Accordingly, we reform the Decision section on page five and Conclusion of Law No. 3 to state that "the claimant was not in the course and scope of his employment when he was involved in a MVA on (date of injury)."

NOTICE OF DENIAL/DISPUTE

The ALJ's determination that the carrier is not liable for the payment of accrued benefits pursuant to Rule 124.3 resulting from its failure to dispute or initiate the payment of benefits within 15 days of the date it received written notice of the injury is supported by sufficient evidence and is affirmed.

DISABILITY

Section 410.168 provides that an ALJ's decision contain findings of fact and conclusions of law, a determination of whether benefits are due, and an award of benefits due. Rule 142.16 provides that an ALJ's decision shall be in writing and include findings of fact, conclusions of law, and a determination of whether benefits are due and if so, an award of benefits due.

The ALJ states in Conclusion of Law No. 4, the summary paragraph on page one and Decision section on page five that because there is no compensable injury, the claimant had no disability. Although the ALJ made a conclusion of law, decision, and discussed the disability period in her discussion of the evidence, the ALJ failed to make a finding of fact whether the claimant had disability resulting from the claimed injury. Because the ALJ's decision contains no findings of fact regarding the disability issue,

which was an issue properly before the ALJ to resolve, it does not comply with Section 410.168 and Rule 142.16. We therefore reverse the ALJ's determination that because there is no compensable injury, the claimant had no disability as being incomplete, and we remand the issue of whether the claimant had disability resulting from the claimed injury. *See* Appeals Panel Decision (APD) 132339, decided December 12, 2013, and APD 180839, decided, June 4, 2018.

SUMMARY

We reform the Decision section on page five and Conclusion of Law No. 3 to state that the claimant was not in the course and scope of his employment when he was involved in a MVA on (date of injury).

We affirm the ALJ's determination, as reformed, that the claimant was not in the course and scope of his employment when he was involved in a MVA on (date of injury).

We affirm the ALJ's determination that the carrier is not liable for the payment of accrued benefits pursuant to Rule 124.3 resulting from its failure to dispute or initiate the payment of benefits within 15 days of the date it received written notice of the injury.

We reverse the ALJ's determination that because there is no compensable injury, the claimant had no disability as incomplete, and we remand the issue of whether the claimant had disability resulting from the claimed injury to the ALJ for further action consistent with this decision.

REMAND INSTRUCTIONS

On remand the ALJ is to make a finding of fact, conclusion of law and a decision regarding whether the claimant had disability resulting from the claimed injury.

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 Division, 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 **ZURICH AMERICAN 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.

Veronica L. Ruberto
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge