

APPEAL NO. 181377  
FILED JULY 23, 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 9, 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 respondent (claimant) had disability resulting from the compensable injury sustained on (date of injury), from August 23, 2017, and continuing through October 20, 2017; (2) the employer made a bona fide offer of employment (BFOE) to the claimant for the period from August 14, 2017, through August 22, 2017, and the appellant (carrier) is entitled to adjust the post-injury weekly earnings for this period; and (3) the employer did not make a BFOE to the claimant for the period from August 23, 2017, through October 20, 2017, and the carrier is not entitled to adjust the post-injury weekly earnings for this period. The carrier appeals Finding of Fact No. 1.B.

DECISION

Reversed and remanded.

The parties stipulated that the claimant sustained a compensable injury on (date of injury), and that the employer provided workers' compensation insurance through the carrier. The carrier appealed, noting that the parties mistakenly entered into an incorrect stipulation at the CCH regarding the claimant's employer. The carrier states that the parties stipulated that on (date of injury), the claimant was the employee of (employer 1), but that the claimant's correct employer on (date of injury), was (employer 2). The carrier noted that both (employer 1) and (employer 2) were insured for workers' compensation insurance by American Zurich Insurance Company on the date of injury. Attached to the carrier's appeal was an Agreed Motion to Reform Stipulation noting the mistaken stipulation regarding the employer which was signed by the attorney for the carrier as well as the attorney for the claimant. We note that (employer 1) additionally sent correspondence to the Texas Department of Insurance, Division of Workers' Compensation (Division) which was in the appeal file and stated, in part, that the claimant was not an employee of (employer 1).

We note that Division records reflect that (employer 1) was given notice of the benefit review conference as well as the CCH. There is no evidence that (employer 2) was given notice of the proceedings.

In *Houston Gen. Ins. Co. v. Association Cas. Ins. Co.*, 977 S.W.2d 634 (Tex. App.-Tyler 1998, no pet.), the Tyler Court of Appeals held that workers' compensation coverage may not be extended by waiver or estoppel. This case is similar to Appeals

Panel Decision (APD) 042725, decided December 15, 2004, where information was sent to the Division after the CCH, advising that the carrier did not have coverage. See *a/so* APD 132905, decided February 18, 2014, and APD 070514, decided May 1, 2007. Because of the uncertainty as to the identity of the proper employer and carrier in this case, we remand the case to the ALJ to determine the proper employer and carrier, and, if it is a different employer and/or carrier other than the employer and carrier listed on the ALJ's decision, the ALJ is to hold another hearing with proper notice to the proper employer and carrier. The parties are to be allowed an opportunity to present evidence as to the correct employer and carrier as well as the issues in this proceeding.

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 **AMERICAN ZURICH 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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Margaret L. Turner  
Appeals Judge

CONCUR:

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Veronica L. Ruberto  
Appeals Judge

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Carisa Space-Beam  
Appeals Judge