

APPEAL NO. 181781
FILED OCTOBER 2, 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 June 25, 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) sustained a compensable injury on (date of injury); (2) the appellant (carrier) is not relieved of liability for compensation because the claimant was not in a state of intoxication, as defined by Section 401.013, when the claimed injury occurred; and (3) the claimant had disability resulting from the compensable injury of (date of injury), from (date), and continuing through the date of the CCH.

The carrier appealed disputing the ALJ's determinations. The carrier contends that the ALJ misstated the evidence in her decision. The claimant responded, urging affirmance of the ALJ's determinations.

DECISION

Reversed and remanded.

The claimant testified that on (date of injury), while painting a roof awning, he lost his balance and fell approximately 15 feet to the ground. The claimant was transported to the hospital by ambulance and he underwent surgery to his right lung. The claimant testified that he sustained injuries to the right side of his body, including multiple rib fractures. The evidence reflects that a urinalysis was performed at the hospital on (date), and that the claimant tested positive for methamphetamines and opiates. Subsequently, the claimant on his own had hair testing performed by another lab facility. The evidence indicates that a hair specimen was collected from the claimant on (date) and a report dated (date) reflects that the specimen tested negative for methamphetamines and opiates.

The parties stipulated, in part, that on (date of injury), the employer provided worker's compensation insurance with (Carrier Name A). We note that the ALJ listed (Carrier Name A) as the true corporate name of the insurance carrier. However, the carrier information sheet in evidence lists the carrier's true corporate name as (Carrier Name B) explaining that (Carrier Name A) comes under the (Carrier Name B) umbrella.

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).

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.”

As previously mentioned, the claimant underwent a post-injury urinalysis that tested positive for methamphetamines and opiates and the claimant later had hair testing performed that tested negative for those substances. The evidence reflects that (Dr. K), a toxicologist, performed a review of records in the case at the carrier’s request and provided a report, which is dated (date). In her discussion of the evidence, which included Dr. K’s toxicologist report, the ALJ specifically states that “[Dr. K’s] report does not accurately document the measurement unit used in [the] [c]laimant’s hair drug test.” The carrier appeals and contends that “[Dr. K] never reviewed the hair drug test since it was completely immaterial” and that the ALJ misstates the facts of this case.

The ALJ states the following in the Discussion section of the decision and order:

The hair drug test results state that the screening cutoff for methamphetamines is 500 [ng/ML]. At [the] [c]arrier’s request, toxicologist, [Dr. K], reviewed [the] [c]laimant’s medical records and opined that [the] [c]laimant’s methamphetamine level of 500 ng/ML or greater established that [the] [c]laimant was intoxicated at the time of the accident. However, [Dr. K’s] report does not accurately document the measurement unit used in [the] [c]laimant’s hair drug test.

Review of Dr. K’s toxicologist report dated (date) references the claimant’s urinalysis performed on (date), but does not reference the claimant’s hair drug test performed in January 2018. The ALJ’s statement that Dr. K does not accurately document the measurement unit used in the claimant’s hair drug test is a misstatement of the evidence in this case, which we view as a material misstatement of fact.

Accordingly, we must reverse the ALJ's intoxication determination and remand the issue of intoxication to the ALJ for further action consistent with this decision.

COMPENSABLE INJURY AND DISABILITY

Since the intoxication issue has been reversed and remanded to the ALJ, the ALJ'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), from (date), and continuing through the date of the CCH are also reversed and remanded for a decision consistent with the ALJ's determination on the intoxication issue on remand.

SUMMARY

We reverse the ALJ's determination that the carrier is not relieved of liability for compensation because the claimant was not in a state of intoxication, as defined in Section 401.013, when the claimed injury occurred, and we remand the intoxication issue to the ALJ for further action consistent with this decision.

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

We reverse the ALJ's determination that the claimant had disability resulting from the compensable injury of (date of injury), from (date), and continuing through the date of the CCH and we remand the disability issue to the ALJ.

REMAND INSTRUCTIONS

On remand the ALJ is to correct her misstatement of the evidence and shall consider all the evidence, make findings of fact and conclusions of law regarding the intoxication, compensable injury and disability issues consistent with this decision.

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 **CHARTER OAK FIRE INSURANCE COMPANY, A MEMBER OF THE TRAVELERS INDEMNITY COMPANIES** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
d/b/a CSC-LAWYERS INCORPORATING SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701-3218.**

Veronica L. Ruberto
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge