

APPEAL NO. 181953
FILED OCTOBER 17, 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 was held on July 18, 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) did not sustain a compensable injury on (date of injury); and (2) the claimant did not have disability at any time resulting from the claimed injury. The claimant appealed, disputing the ALJ's determinations of compensability and disability. The respondent (carrier) responded, urging affirmance of the disputed compensability and disability determinations.

DECISION

Reversed and remanded.

The claimant testified that on (date of injury), he was lifting boxes to put on the line and had been doing so all morning and that after lunch he felt pain in his middle and low back. In his initial injury treatment report dated (date), the claimant described the accident as follows: "at around 12:15 p.m., Monday, [(date of injury)] I felt pain as I was loading my work station (line) with heavy metal screw boxes." In her discussion of the evidence, the ALJ states, in part, that "a careful review of the evidence presented shows that there is no mechanism of injury and no injury event was described by [the] [c]laimant." A review of the evidence reflects that the claimant alleges he hurt his back while lifting boxes at work to place on his work station. We view the ALJ's misstatement of the evidence as a material misstatement of the facts. While the ALJ can accept or reject in whole or, in part, the evidence regarding the claimed injury, her decision in this case, based on the fact that no injury event was described by the claimant, requires that we reverse the ALJ's determination that the claimant did not sustain a compensable injury on (date of injury), and remand this issue to the ALJ for further action consistent with this decision.

Because we have reversed and remanded the issue of compensability, we also reverse the ALJ's determination that the claimant had no disability at any time resulting from the claimed injury and we remand the issue of disability to the ALJ for further action consistent with this decision.

SUMMARY

We reverse the ALJ's determination that the claimant did not sustain a compensable injury and remand the compensable injury issue to the ALJ for further action consistent with this decision.

We reverse the ALJ's determination that the claimant did not have disability at any time resulting from the claimed injury and remand the disability issue 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 description of the claimed injury. The ALJ shall consider all of the evidence and make a determination of whether the claimant sustained a compensable injury on (date of injury), and whether the claimant had disability.

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 **ACE AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
1999 BRYAN STREET, SUITE 900
DALLAS, TEXAS 75201.**

Margaret L. Turner
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Carisa Space-Beam
Appeals Judge