

APPEAL NO. 182682
FILED JANUARY 28, 2019

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A consolidated contested case hearing (CCH) was held on October 23, 2018, with the record closing on October 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 appellant (claimant) did not sustain a compensable injury on (date of injury); (2) (Employer G) was the claimant's employer for purposes of the 1989 Act on (date of injury); and (3) respondent 1 (carrier) is not relieved from liability under Section 409.002 because of the claimant's failure to timely notify her employer pursuant to Section 409.001.

The claimant appealed the ALJ's compensable injury and employer determinations. Also, the claimant noted on appeal that the ALJ had inconsistencies throughout the decision. Respondent 2 (self-insured) responded, urging affirmance. The appeal file does not contain a response from the carrier.

The ALJ's determination that the carrier is not relieved from liability under Section 409.002 because of the claimant's failure to timely notify her employer pursuant to Section 409.001 was not appealed and that determination became final pursuant to Section 410.169.

DECISION

Reversed and remanded.

The claimant testified that she was struck by a motor vehicle while crossing a street on (date of injury). The evidence reflects that on that date Employer G provided workers' compensation insurance with the carrier, and (Employer T), a self-insured governmental entity, provided workers' compensation insurance as a self-insured.

Carrier-Carrier Information Sheet

As a condition of being issued a certificate of authority to engage in the business of insurance in Texas, alien or foreign insurance companies are required to appoint a person in Texas as agent for service of process on whom any process to be served on the company may be served. See Texas Insurance Code Section 804.103(b); also, Texas Labor Code Sections 401.011(28) and 410.204(d). The carrier is required to provide both a name and a physical address of a registered agent for service of process

in Texas. See *generally* Appeals Panel Decision (APD) 011845-s, decided September 11, 2001; APD 180107, decided February 20, 2018. See *also* Section 410.164(c).

In this case the carrier provided the name and address of a registered agent in the state of (state); however, it failed to provide a name of a registered agent for service of process in Texas. In particular, we note that the carrier provided a registered agent name and post office box address for a (title) with (third party administrator) in (state), and provided a physical address for service of process in (city), Texas. Also, we note that, in the Order section on page 6 of her decision, the ALJ listed (name) as the registered agent for service of process with a physical address in (city), Texas; however, there is no carrier information sheet in evidence reflecting that information. Accordingly, we remand this case to the ALJ to request from the carrier the required information for its registered agent in Texas as provided in Section 410.164(c).

COMPENSABLE INJURY AND EMPLOYER

Given that we are remanding this case for the ALJ to determine the proper name and address of the registered agent for service of process for the carrier, we reverse the ALJ's determinations that the claimant did not sustain a compensable injury on (date of injury), and Employer G was the claimant's employer for purposes of the 1989 Act on that same date, and we remand the compensable injury and employer issues to the ALJ for further action consistent with this decision. Furthermore, we note the ALJ's determination in the Decision section on page six contains inconsistent language regarding the claimant's employer and omits the date of injury in the first sentence, although the ALJ did include the date of injury in the second sentence. The ALJ states, in part, that:

(Employer G) **was** the [c]laimant's employer for purposes of the [1989] Act.
(Employer G) **was not** the [c]laimant's employer for purposes of the [1989] Act
on (date of injury) (emphasis added)[.]

INCONSISTENCIES AND OMISSIONS

Pursuant to Section 410.203(c), the Appeals Panel may not remand a case more than once. Given that we are remanding this case for the ALJ to determine the proper name and address of the registered agent for service of process for the carrier, we note the ALJ's decision contains inconsistencies and omissions throughout the decision.

Statement of the Case, Page Two

On appeal, the claimant references an inconsistency by the ALJ on page two of the decision. The ALJ states "Docket number [docket no.] (docket no. redacted) is

associated with (Employer G) and State Office of Risk Management.” We note the evidence reflects that (Employer G) provided workers’ compensation with (the carrier).

Stipulations, Page Five

A review of the record reflects that the ALJ excluded from the decision a stipulation made by the parties at the CCH. The parties stipulated that on (date of injury), (Employer (G)), was an employer of the claimant.

Also, the ALJ included in the decision a stipulation that was not made by the parties at the CCH. Finding of Fact No. 1.C. states that on (date of injury), (Employer T) provided workers’ compensation insurance with State Office of Risk Management.

Conclusion of Law No. 4, Page Six

We note that the ALJ’s Conclusion of Law No. 4 omits the date of injury as part of the determination on who the claimant’s employer was for purposes of the 1989 Act.

Order Section, Page Six

We note that the ALJ did not include any language on the payment of benefits under the Order section on page six.

SUMMARY

We remand this case to the ALJ to obtain compliance with Section 410.164(c) by determining the proper name and address of the registered agent for service of process for the carrier.

We reverse the ALJ’s determination that the claimant did not sustain a compensable injury on (date of injury), and we remand the compensable injury issue to the ALJ for further action consistent with this decision.

We reverse the ALJ’s determination that Employer G was the claimant’s employer for purposes of the 1989 Act on (date of injury), and we remand the employer issue to the ALJ for further action consistent with this decision.

REMAND INSTRUCTIONS

On remand, the ALJ shall take official notice of the Texas Department of Insurance, Division of Workers’ Compensation (Division) records regarding the carrier

and request from the carrier the required information for its registered agent in Texas as required in Section 410.164(c).

After the ALJ determines the proper name and address of the registered agent for service of process for the carrier, the ALJ is to make determinations on the compensable injury and employer issues consistent with this decision and supported by the evidence. The ALJ is to correct all inconsistencies and omissions as mentioned above in 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 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.

According to the information provided by the self-insured, the true corporate name of the insurance carrier is **STATE OFFICE OF RISK MANAGEMENT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

For service in person the address is:

**STEPHEN S. VOLLBRECHT, EXECUTIVE DIRECTOR
300 W. 15TH STREET
WILLIAM P. CLEMENTS, JR. STATE OFFICE BUILDING, 6TH FLOOR
AUSTIN, TEXAS 78701.**

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AUSTIN, TEXAS 78711-3777.**

Veronica L. Ruberto
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge