

APPEAL NO. 190183
FILED MARCH 21, 2019

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 December 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 respondent (claimant) sustained a compensable work injury on (date of injury); and (2) the appellant (carrier) is relieved from liability under Section 409.004 because of the claimant's failure to timely file a claim for compensation with the Texas Department of Insurance, Division of Workers' Compensation (Division) within one year of the injury as required by Section 409.003. The carrier appealed, contending that because the ALJ properly determined the carrier is relieved of liability, the claimed injury cannot be a compensable injury. The appeal file does not contain a response from the claimant to the carrier's appeal.

The ALJ's determination that the carrier is relieved from liability under Section 409.004 because of the claimant's failure to timely file a claim for compensation with the Division within one year of the injury as required by Section 409.003 was not appealed and has become final pursuant to Section 410.169.

DECISION

Reversed and rendered.

The claimant testified that he was injured when he either missed a step or slipped as he was getting out of his truck and fell to the ground.

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).

COMPENSABLE INJURY

The ALJ found that the claimant suffered harm to the physical structure of his body on (date of injury), in the course and scope of his employment. This finding was not appealed. As discussed above the ALJ's determination that the carrier is relieved

from liability under Section 409.004 because of the claimant's failure to timely file a claim for compensation with the Division within one year of the injury as required by Section 409.003 was not appealed and has become final pursuant to Section 410.169.

We hold that the ALJ erred in concluding the claimant sustained a compensable injury on (date of injury), because the carrier is relieved of liability under Section 409.004 based on the claimant's failure to timely file a claim for compensation with the Division within one year of the injury as required by Section 409.003. Section 401.011(10) defines "compensable injury" as "an injury that arises out of and in the course and scope of employment for which compensation is payable under this subtitle." See Appeals Panel Decision (APD) 060779, decided June 19, 2006; APD 070532, decided May 22, 2007. Consequently, we reverse the ALJ's determination that the claimant sustained a compensable injury on (date of injury), and render a new decision that the claimant did not sustain a compensable injury because the carrier was relieved from liability under Section 409.004 due to the claimant's failure to timely file a claim for compensation with the Division within one year of the injury as required by Section 409.003.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**RICHARD J. GERGASKO, PRESIDENT
2200 ALDRICH STREET
AUSTIN, TEXAS 78723.**

Carisa Space-Beam
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge