

APPEAL NO. 190184
FILED MARCH 26, 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 (CCH) was held on August 7, 2018, September 25, 2018, and November 29, 2018, with the record closing on December 12, 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) (Employer R) was not the appellant's (claimant) employer for purposes of the 1989 Act at the time of the claimed injury; (2) (Employer D) was the claimant's employer for purposes of the 1989 Act; (3) the claimant did not sustain a compensable injury on (date of injury); (4) because the claimant did not sustain a compensable injury, the claimant did not have disability as a result of the claimed injury of (date of injury), from January 20, 2018, through the date of the CCH; (5) respondent 1 (carrier 1) is not liable for the claimant's claimed injury allegedly sustained on (date of injury); and (6) respondent 2 (carrier 2) is liable for any compensable injury sustained by the claimant on (date of injury).

The claimant appealed, disputing the ALJ's determinations of compensability and disability. Both carrier 1 and carrier 2 responded urging affirmance of the disputed compensability and disability determinations.

The ALJ's determinations that Employer R was not the claimant's employer for purposes of the 1989 Act at the time of the claimed injury; Employer D was the claimant's employer for purposes of the 1989 Act; carrier 1 is not liable for the claimant's claimed injury allegedly sustained on (date of injury); and carrier 2 is liable for any compensable injury sustained by the claimant on (date of injury), have not been appealed and have become final pursuant to Section 410.169.

DECISION

Reversed and remanded.

The claimant testified that he was using a compacting machine to compact dirt at work when he felt pain in his low back on (date of injury).

In his discussion of the evidence the ALJ states that: "[the] [c]laimant did not visit a doctor until January 30, 2018. [The] [c]laimant treated at Concentra Medical Centers from January 30, 2018[,] through February 22, 2018[,] and there is no mention in the multiple Concentra office visit records that indicate [the] [c]laimant was injured on the job or even how he was injured." The ALJ also states that "[t]he medical records of Concentra merely provide a diagnosis of sprain of ligaments of the lumbar spine. They

do not indicate how the injury occurred.” The ALJ determined that the claimant did not sustain a compensable injury on (date of injury).

On appeal, the claimant specifically references that the medical records in evidence describe the claimant’s mechanism of injury that occurred on (date of injury). In evidence is a medical record from Concentra Medical Centers dated January 30, 2018, that states that “[t]he patient presents today with lower back pain. He used a machine to compact down the soil on (date of injury) when his back started hurting.” That record reflects that the (date of injury), event occurred at work. Additionally, that the “[p]atient presents with C/O [complaints of] lower back injury. As per patient, he bent down to work on a machine and felt a sharp pain in his lower back. Also, he said he was later dismissed from work.”

The ALJ’s statement that the medical records of Concentra do not indicate how the injury occurred or that he was injured at work are misstatements of the evidence presented at the CCH. As mentioned above, a medical record from Concentra Medical Center referenced an injury at work to the claimant’s back while using a compacting machine on (date of injury).

While the ALJ can accept or reject in whole or, in part, the evidence regarding the claimed injury, his decision in this case is based, in part, upon a misstatement of the medical evidence in the record. Accordingly, we reverse the ALJ’s determination that the claimant did not sustain a compensable injury on (date of injury), and we remand the issue of compensability 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 because the claimant did not sustain a compensable injury, the claimant did not have disability as a result of the claimed injury of (date of injury), from January 20, 2018, through the date of the CCH, and we remand the issue of disability to the ALJ for further action consistent with this decision.

CLERICAL ERRORS

We note that the heading of the ALJ’s decision on page one incorrectly states “(city)” Field Office rather than “(city)” Field Office. Also, we note that the ALJ’s Parties Present section on page three, second sentence, incorrectly states the claimant’s attorney’s name as “R” rather than “R.”

SUMMARY

We reverse the ALJ's determination that the claimant did not sustain a compensable injury on (date of injury), and we remand the compensability issue to the ALJ.

We reverse the ALJ's determination that because the claimant did not sustain a compensable injury, the claimant did not have disability as a result of the claimed injury of (date of injury), from January 20, 2018, through the date of the CCH, and we remand the disability issue to the ALJ.

REMAND INSTRUCTIONS

On remand the ALJ is to correct his misstatement of the evidence regarding the medical records in evidence. 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 from January 20, 2018, through the date of the CCH.

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.

CONFIDENTIAL

Tex. Labor Code § 402.083

According to information provided by carrier 1, the true corporate name of the insurance carrier is **SERVICE LLOYDS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**JOSEPH KELLY-GRAY, PRESIDENT
6907 CAPITOL OF TEXAS HIGHWAY NORTH
AUSTIN, TEXAS 78755.**

According to information provided by carrier 2, the true corporate name of the insurance carrier is **TRAVELERS CASUALTY COMPANY OF AMERICA** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE CO.
d/b/a CSC-LAWYERS INCORPORATING SERVICE CO.
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