

APPEAL NO. 190585
FILED MAY 31, 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 February 25, 2019, in (city), Texas, with (administrative law judge) presiding as the administrative law judge (ALJ). The ALJ resolved the disputed issues by determining that: (1) the decedent sustained a compensable injury in the form of an occupational disease with a date of injury of (date of injury); (2) the decedent's death on May 21, 2016, did not result from the compensable injury of (date of injury); and (3) the decedent had disability from May 2, 2014, through the date of his death resulting from an injury sustained on (date of injury).

The appellant/cross-respondent (carrier) appealed, disputing the ALJ's determinations that the decedent sustained a compensable injury in the form of an occupational disease with a date of injury of (date of injury), and that the decedent had disability from May 2, 2014, through the date of his death resulting from an injury sustained on (date of injury). There is no response in the appeal file from the respondent/cross-appellant (claimant beneficiary) to the carrier's appeal. The claimant beneficiary cross-appealed, disputing the ALJ's determination that the decedent's death on May 21, 2016, did not result from the compensable injury of (date of injury). The carrier responded, urging affirmance of the cross-appealed determination.

DECISION

Affirmed in part, reversed by striking in part, and reversed and rendered in part.

The parties stipulated, in part, that the decedent died on May 21, 2016. The evidence reflects the decedent performed maintenance at a cement production plant and was exposed to cement dust particles. The evidence also reflects that the decedent was admitted to a hospital on (date of injury), with complaints of cough and shortness of breath. Medical records in evidence from the hospital noted references to pulmonary fibrosis. The decedent was discharged on May 4, 2014, with a diagnosis of "[s]trept pneumonia and sepsis secondary to bilateral pneumonia, also with fibrosis with positive rhinovirus." The evidence further reflects that the decedent was hospitalized again in December 2015 for respiratory problems, and that he was repeatedly diagnosed with pulmonary fibrosis. In evidence is the autopsy report from a postmortem examination performed on May 24, 2016, noting the decedent's cause of death as "[s]evere diffuse pulmonary fibrosis," as well as the death certificate dated June 1, 2016, noting the decedent's immediate cause of death as "respiratory failure secondary to pneumonia superimposed on idiopathic pulmonary fibrosis."

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 OCCUPATIONAL DISEASE

The ALJ's determination that the decedent sustained a compensable injury in the form of an occupational disease with a date of injury of (date of injury), is supported by sufficient evidence and is affirmed.

DISABILITY

The disability issue as agreed to by the parties at the CCH was whether the decedent had disability from May 2, 2014, through the date of his death. Although the ALJ correctly noted the disability start date as May 2, 2014, in the Issue Statement No. 2, Conclusion of Law No. 5, the decision section, and the summary paragraph on page one of the decision, Finding of Fact No. 7 incorrectly identifies the start date as (date of injury). We reverse by striking that portion of Finding of Fact No. 7 that the decedent had disability on (date of injury), as exceeding the scope of the issue before the ALJ. That portion of the ALJ's determination that the decedent had disability from May 2, 2014, through the date of his death resulting from an injury sustained on (date of injury), is supported by sufficient evidence and is affirmed.

COMPENSABILITY OF DECEDENT'S DEATH

The ALJ's finding that the decedent was diagnosed with pulmonary fibrosis on (date of injury), was not appealed, and his finding that the decedent's pulmonary fibrosis arose as a result of his employment is supported by the evidence. The ALJ also found the evidence was insufficient to establish that the decedent's death on May 21, 2016, arose out of or naturally flowed from the (date of injury), compensable injury, and therefore determined that the decedent's death on May 21, 2016, did not result from the compensable injury. However, as noted above the death certificate listed the decedent's immediate cause of death as "respiratory failure secondary to pneumonia superimposed on idiopathic pulmonary fibrosis," and the autopsy report listed the decedent's cause of death as severe diffuse pulmonary fibrosis. The compensable injury in this case, as determined by the ALJ, is pulmonary fibrosis. There was no evidence that established the decedent's death resulted from something other than

respiratory problems. Under the facts of this case the ALJ's determination that the decedent's death on May 21, 2016, did not result from the compensable injury is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. Therefore, we reverse the ALJ's determination that the decedent's death on May 21, 2016, did not result from the compensable injury of (date of injury), and we render a new decision that the decedent's death on May 21, 2016, did result from the compensable injury of (date of injury).

SUMMARY

We affirm the ALJ's determination that the decedent sustained a compensable injury in the form of an occupational disease with a date of injury of (date of injury).

We affirm that portion of the ALJ's determination that the decedent had disability from May 2, 2014, through the date of his death resulting from an injury sustained on (date of injury).

We reverse by striking that portion of Finding of Fact No. 7 that the decedent had disability on (date of injury), as exceeding the scope of the disability issue before the ALJ.

We reverse the ALJ's determination that the decedent's death on May 21, 2016, did not result from the compensable injury of (date of injury), and we render a new decision that the decedent's death on May 21, 2016, did result from the compensable injury of (date of injury).

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

**CORPORATION SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701-3232.**

Carisa Space-Beam
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Margaret L. Turner
Appeals Judge