APPEAL NO. 190602
FILED JUNE 03, 2019

This appeal after remand 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 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). Appeals Panel Decision (APD) 182682, decided January 28, 2019, was issued as a result of the ALJ's decision and order following that hearing. The case was remanded to the ALJ to correct the carrier information for the registered agent of respondent 1/cross-appellant 1 (carrier), correct inconsistencies and omissions, and make determinations on the compensable injury and employer issues supported by the evidence. No further hearing was held on remand. The ALJ issued a decision and order on remand which resolved the disputed issues by deciding that: (1) appellant/cross-respondent (claimant) sustained a compensable injury on (date of injury); (2) on (date of injury), (Employer) (Employer) was the claimant's employer for purposes of the Texas Workers' Compensation Act; (3) on (date of injury), (employer) (Employer) was the claimant's employer for purposes of the Texas Workers' Compensation Act; and (4) respondent 2/cross-appellant 2 (self-insured) is relieved from liability under Section 409.002 because of the claimant's failure to timely notify Employer or the self-insured pursuant to Section 409.001.

The claimant appealed, disputing the ALJ's determination that the self-insured is relieved from liability under Section 409.002 because of the claimant's failure to timely notify Employer or the self-insured pursuant to Section 409.001. The claimant contends that the ALJ's prior decision and order contained an unappealed finding that the claimant notified her employer, or an employee holding a supervisory or management position, of the claimed injury within 30 days of (date of injury), and that the finding should be applicable to both the carrier and the self-insured. The claimant further argues that the ALJ confuses notice to employer with notice to the self-insured and therefore misapplies the notice provisions. The carrier responded to the claimant's appeal, arguing that notice to Employer is irrelevant because the claimant was not in the paid service of Employer and therefore could not be its employee. The self-insured responded, contending that the claimant could not be an employee of Employer as a matter of law.

The carrier cross-appealed, contending that the ALJ erred by determining that the claimant was an employee of Employer . Additionally, the carrier disputes the ALJ's determination that the claimant sustained a compensable injury on (date of injury). The appeal file does not contain a response from the claimant or the self-insured to the carrier's request for review.

The self-insured cross-appealed, disputing the ALJ's determination that Employer was the claimant's employer for purposes of the Texas Workers' Compensation Act. The self-insured argues that the claimant was not an employee of Employer as a matter of law. The carrier responded to the self-insured's appeal. In its response, the carrier agreed with the self-insured's position that the claimant was not an employee of Employer . The appeal file does not contain a response from the claimant to the self-insured's request for review.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated, in part, that on (date of injury), Employer was an employer of the claimant. The claimant testified that she was injured when she was struck by a car walking to her car.

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 claimant testified that upon her arrival at work on the date of injury, she parked as directed by a traffic attendant for Employer . It was undisputed that upon finishing her duties the claimant was walking to the parking lot to retrieve her vehicle when she was struck by a car while crossing the street. The ALJ determined the claimant sustained a compensable injury applying the access doctrine.

The general rule is that workers' compensation benefits do not apply to injuries received going to and from work. *Texas General Indemnity Co. v. Bottom*, 365 S.W.2d 350 (Tex. 1963). An exception is those cases which come within the access doctrine, where "the employer has evidenced an intention that the particular access route or area be used by the employee in going to and from work, and where such access route or area be used by the employee in going to and from work, and where such access route or area is so closely related to the employer's premises as to be fairly treated as a part of the premises." *Texas Compensation Insurance Co. v. Matthews*, 519 S.W.2d 630 (Tex. 1974). *Matthews* concerned an employee who was injured when she fell in a

street on her way to work. In that case, the Supreme Court briefly summarized prior cases concerning the access doctrine, including *Kelty v. Travelers Insurance Co.*, 391 S.W.2d 558 (Tex. Civ. App.-Dallas 1965, writ ref'd n.r.e.) which held that whether the employee was within the course and scope of her employment at the time of her injury presented a fact question, which precluded the rendition of summary judgment in favor of the carrier. In *Kelty*, the employee sustained injuries after she slipped on an icy sidewalk 10 to 12 feet from the employer's building, which sidewalk was found to be an appurtenance to the premises leased by the employer who was responsible for maintaining it. However, the *Matthews* court wrote that *Kelty* had carried the access exception "as far as it reasonably could be, without an amendment to the Workmen's Compensation Act," stating that "no case has extended the 'access exception' out into the public streets where other members of the public are subject to the same hazard." In the instant case, the claimant's injury occurred while she was walking in the roadway of a public street and was thus "a consequence of risk and hazards to which all members of the traveling public are subject rather than risk and hazards having to do with and originating in the work or business of the employer." *See Kelty.*

Accordingly, the ALJ's determination that the claimant sustained a compensable injury on (date of injury), is reversed and a new decision rendered that the claimant did not sustain a compensable injury on (date of injury).

EMPLOYER AS EMPLOYER

The ALJ's determination that on (date of injury), Employer was the claimant's employer for purposes of the Texas Workers' Compensation Act is supported by sufficient evidence and is affirmed.

EMPLOYER AS EMPLOYER

The ALJ determined that on (date of injury), Employer was the claimant's employer for purposes of the Texas Workers' Compensation Act. The parties stipulated at the CCH that Employer was an employer of the claimant on the date of injury. Section 501.002(a) provides, in part, that enumerated provisions of Subtitle A and B apply to this chapter except to the extent that they are inconsistent with Chapter 501. Chapter 401 was an enumerated provision that applied to Chapter 501 but specifically excepted Section 401.012, which defined employee. Chapter 501, which provides for workers' compensation coverage for state employees, (…), specifically provides a definition of employee in Section 501.001(5). Section 501.001(5) defines an employee, in part, as a person who is: paid from state funds but whose duties require that the person work and frequently receive supervision in a political subdivision of the state.

It was undisputed that the claimant did not receive payment from Employer for work performed on (date of injury). At the CCH, the self-insured argued that as a matter of law the claimant could not be an employee of Employer because she did not receive payment from Employer . In her discussion of the evidence in the decision and order on remand, the ALJ acknowledged this argument but stated that it was "not supported by persuasive authority." We disagree. There was no evidence that the claimant was paid from state funds in relation to her work on the date of injury. Accordingly, under the facts of this case, it was legal error for the ALJ to determine that on (date of injury), Employer was the claimant's employer for purposes of the Texas Workers' Compensation Act. We reverse the ALJ's determination that on (date of injury), Employer was the claimant's employer for purposes of the Texas Workers' Compensation Act and render a new decision that on (date of injury), Employer was not the claimant's employer for purposes of the Texas Workers' Compensation Act.

NOTICE TO EMPLOYER

In APD 182682, *supra*, it was noted that the ALJ's initial determination in this case on the issue of timely notice to the employer was not appealed and that determination became final pursuant to Section 410.169. The ALJ noted in her decision and order on remand that the timely notice issue became final for the carrier and would not be addressed, but the decision would address the timely notice issue for the self-insured. The claimant contends in her appeal that the finding of fact regarding timely notice to the employer in the initial CCH was not limited specifically to the carrier and therefore also became final for the self-insured. As set forth above, we have reversed the ALJ's determination that Employer was the claimant's employer. Consequently, the issue of timely notice to Employer is moot.

SUMMARY

We affirm the ALJ's determination that on (date of injury), Employer was the claimant's employer for purposes of the Texas Workers' Compensation Act.

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 on (date of injury).

We reverse the ALJ's determination that on (date of injury), Employer was the claimant's employer for purposes of the Texas Workers' Compensation Act and render a new decision that on (date of injury), Employer was not the claimant's employer for purposes of the Texas Workers' Compensation Act.

We have reversed the ALJ's determination that Employer was the claimant's employer; consequently, the issue of timely notice to Employer is moot.

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.

For service by mail the address is:

STEPHEN S. VOLLBRECHT, EXECUTIVE DIRECTOR
P.O. BOX 13777
AUSTIN, TEXAS 78711-3777.

According to the information provided by the carrier, the true corporate name of the insurance carrier is **ZURICH AMERICAN 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 78701-3218.

____
Margaret L. Turner
Appeals Judge

CONCUR:

____
Cristina Beceiro
Appeals Judge

____
Carisa Space-Beam
Appeals Judge