

APPEAL NO. 190874
FILED JULY 11, 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 April 8, 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 appellant/cross-respondent (claimant) did not sustain a compensable injury in the form of an occupational disease with a date of injury of (date of injury); and (2) because the claimant timely notified the employer of the claimed occupational disease, the respondent/cross-appellant (carrier) is not relieved from liability under Section 409.002. We note the ALJ inadvertently states in the decision that Claimant's Exhibits C-1 through C-G were admitted, rather than C-1 through C-9, and that Carrier's Exhibits CR-A through CR-9 were admitted, rather than CR-A through CR-G.

The claimant appealed, disputing the ALJ's determination that he did not sustain a compensable injury in the form of an occupational disease with a date of injury of (date of injury). The carrier responded, urging affirmance of the appealed determination. The carrier cross-appealed, disputing the ALJ's determination that because the claimant timely notified the employer of the claimed occupational disease, the carrier is not relieved from liability under Section 409.002. The appeal file does not contain a response from the claimant to the carrier's cross-appeal.

DECISION

Reversed and remanded.

The parties stipulated, in part, that Valley Fever is the same condition as coccidioidomycosis. The claimant testified that he worked as an environmental compliance coordinator for the employer at various work sites in West Texas. The claimant also testified that around (date of injury), he started not feeling well, was losing his stamina, had a hard time breathing, and was coughing a lot. The claimant further testified that he was initially diagnosed with an infection by (Dr. B), but after being subsequently treated by (Dr. S), he was ultimately diagnosed with Valley Fever and told that his diagnosis of Valley Fever may be related to his work. In evidence is a medical record dated July 5, 2018, which reflects the claimant was diagnosed with Valley Fever on that date and told that this diagnosis may be work related. The claimant also testified that he notified the employer of this injury on the day he was diagnosed. We note in evidence is an employee injury report dated July 18, 2018, and a Notice of Denial of Compensability/Liability and Refusal to Pay Benefits (PLN-1) dated August 2, 2018, that state the claimant notified the employer of this injury on July 12, 2018.

While a date of injury was not a specific issue stated at the beginning of the CCH, during the CCH the claimant introduced evidence that while his symptoms began on or around (date of injury), it was not until July 2018, that he was diagnosed with Valley Fever and told by Dr. S that Valley Fever may be related to his work. The Appeals Panel has held that where the claimed injury is an occupational disease and there is an issue of timely notice, as in the case on appeal, it is essential for a resolution of the issues that a date of injury be determined. See Appeals Panel Decision (APD) 972552, decided February 23, 1998.

The ALJ found the claimant knew or should have known on July 5, 2018, that the injurious condition may have been related to his employment. The ALJ also found that on July 12, 2018, the claimant notified the employer or an employee holding a supervisory or management position of his claimed work-related occupational disease, which is within 30 days of when he knew or should have known that his claimed occupational disease may have been related to his employment. However, the ALJ determined that the claimant did not sustain a compensable injury in the form of an occupational disease with a date of injury of (date of injury). The ALJ also determined that the claimant timely notified the employer of the claimed occupational disease, which would be predicated on a July 5, 2018, date of injury. The ALJ's date of injury in his finding of fact conflicts with the date of injury in his conclusion of law and decision. With the issues in this case of compensability of an occupational disease and timely notice to the employer, the ALJ must determine the date of injury to resolve this case. Therefore, we reverse the ALJ's determinations that the claimant did not sustain a compensable injury in the form of an occupational disease with a date of injury of (date of injury), and that because the claimant timely notified the employer of the claimed occupational disease the carrier is not relieved from liability under Section 409.002. We remand these issues to the ALJ for further action consistent with this decision.

SUMMARY

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

We reverse the ALJ's determination that because the claimant timely notified the employer of the claimed occupational disease the carrier is not relieved from liability under Section 409.002 and we remand this issue to the ALJ for further action consistent with this decision.

REMAND INSTRUCTIONS

On remand the ALJ is to make findings of fact, conclusions of law, and a decision on the date of injury in this case that is consistent with the evidence presented. The ALJ is then to make findings of fact, conclusions of law, and a decision as to whether the claimant sustained a compensable injury in the form of an occupational disease, and whether the carrier is relieved from liability under Section 409.002 because of the claimant's failure to timely notify his employer pursuant to Section 409.001.

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 APD 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **STARR INDEMNITY & LIABILITY COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
1999 BRYAN STREET, SUITE 900
DALLAS, TEXAS 75201-3136.**

Carisa Space-Beam
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Margaret L. Turner
Appeals Judge