

APPEAL NO. 190929
FILED JULY 24, 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 (date), with the record closing on (date), in (city), Texas, with (administrative law judge) presiding as the administrative law judge (ALJ). The ALJ resolved the disputed issue by deciding that respondent 1 (claimant) sustained a compensable injury on (date of injury). The ALJ also determined that the appellant (carrier 1) is liable for the claimant's compensable injury of (date of injury).

Carrier 1 appealed, disputing the ALJ's determinations. Carrier 1 contends that: (1) respondent 2 (employer) is barred under the principle of *res judicata* from bringing forward the issue of standing as a subclaimant under Section 409.009 based on a decision and order issued on (date); (2) the employer does not qualify as a subclaimant under Section 409.009; (3) the employer did not comply with each of the requirements specified in 28 TEX. ADMIN. CODE § 140.6 (Rule 140.6) for filing and pursuing a claim under Section 409.009; (4) the claimant did not sustain a compensable injury on (date of injury); and (5) carrier 1 is not liable to pay benefits for or in connection with the claimed injury. The employer responded, urging affirmance of the ALJ's determinations. The appeal file does not contain a response to carrier 1's appeal from the claimant or respondent 3 (carrier 2).

DECISION

Reversed and remanded.

The parties stipulated, in part, that on (date of injury), the claimant was employed by the employer and (employer). The claimant did not testify at the CCH. Records in evidence establish the claimant was crossing a public road on foot when he was hit by a truck driven by a coworker.

EFFECT OF (DATE), DECISION AND ORDER

A previous CCH was held on (date), with a different ALJ, in Docket No. (redacted). The issue at that CCH was whether the employer has standing as a party to bring forward the issue of compensability. The ALJ in that case issued a decision on (date), in which she determined the employer does not have standing as a party to bring forward the issue of compensability. Records from the Texas Department of Insurance, Division of Workers' Compensation (Division) establish that the ALJ's decision was not appealed and became final pursuant to Section 410.169. The ALJ's discussion in that case states the following:

The [Act] provides two ways for an employer to bring a claim with the Division: either as a subclaimant or by disputing the compensability of a claim if the carrier has accepted liability for the payment of benefits pursuant to [Section] 409.009 and [Section] [409.011(b)(4)]. . . . [The] [e]mployer failed to prove that it has standing as a party to bring forward the issue of compensability as a matter of law.

The attorneys for the claimant, carrier 1, and carrier 2 all argued at the CCH conducted on (date), that the decision issued on (date), constitutes res judicata on the issue of whether the employer has standing as a party under the Act to bring forward the issue of compensability, which precludes the employer from bringing forward the issue of standing as a subclaimant under Section 409.009. Although this issue was actually litigated by the parties at the CCH, the ALJ did not discuss or make any findings of fact, conclusions of law, or a decision on this issue. Carrier 1 again urges this argument on appeal. We hold the ALJ erred in failing to add the issue of whether the employer is barred from pursuing compensability under res judicata based on the decision and order issued on (date), and in failing to make findings of fact, conclusions of law, and a decision on that issue. Therefore, we reverse the ALJ's decision as being incomplete, and we remand this case to the ALJ for further action consistent with this decision.

SUBCLAIMANT STATUS

A review of the record reveals that the parties extensively litigated the issue of whether the employer has standing to bring forward this claim as a subclaimant pursuant to Section 409.009 and Rule 140.6. Although the ALJ made findings of fact on this issue, the ALJ failed to add the issue of whether the employer has standing to bring forward this claim as a subclaimant pursuant to Section 409.009 and Rule 140.6, and failed to make conclusions of law and a decision on that issue. We hold the ALJ erred in failing to add this issue in the decision and order and in failing to make conclusions of law and a decision as to whether the employer has standing to bring forward this claim as a subclaimant pursuant to Section 409.009 and Rule 140.6. Therefore, we remand this case to the ALJ for further action consistent with this decision.

Rule 140.6 provides the following:

- (a) Applicability. This section is applicable to a subclaim pursued under Labor Code [Section] 409.009, including a subclaim pursued by a health care insurer.
- (b) Party status. A subclaimant as described in [Section] 409.009 is a party to a claim concerning workers' compensation benefits.

(c) Rights in Relation to the Injured Employee.

(1) A subclaimant may file and pursue a claim for reimbursement of a benefit that has been provided to an injured employee, and is entitled to appropriate dispute resolution in accordance with the Texas Workers' Compensation Act and Division of Workers' Compensation rules.

(2) A subclaimant may pursue a claim for reimbursement of a benefit that has been provided to an injured employee and participate in the dispute resolution process without the participation of the injured employee if:

(A) there is no prior written agreement between the injured employee and the workers' compensation insurance carrier or no final decision by the Division on the issue in dispute;

(B) the workers' compensation insurance carrier has denied the entitlement to benefits under the Act and Division rules;

(C) the injured employee is not pursuing dispute resolution to establish the injured employee's entitlement to benefits with reasonable diligence; and

(D) the subclaimant has provided the injured employee with written notice of:

(i) subclaimant's intent to pursue a claim for reimbursement of a benefit;

(ii) warning that a decision rendered may be binding against the injured employee; and

(iii) contact information for the Office of the Injured Employee Counsel.

(3) At a [CCH] without the participation of the injured employee, the subclaimant must show, in addition to other facts:

(A) subclaimant provided written notice to the injured employee as specified in paragraph (2)(D) of this subsection;

(B) it has contacted the injured employee and the injured employee is not pursuing the dispute with reasonable diligence; or

(C) it has been unable to contact the injured employee through the exercise of reasonable diligence.

(d) Claims for Reimbursement of Medical Benefits.

(1) Subclaimants, other than subclaimants described in [Section] 409.0091, must pursue a claim for reimbursement of medical benefits and participate in medical dispute resolution in the same manner as an injured employee or in the same manner as a health care provider, as appropriate, under Chapters 133 and 134 of this title (relating to General Medical Provisions and Benefits--Guidelines for Medical Services, Charges, and Payments).

(2) A health care insurer subclaimant must submit a reimbursement request in the form/format and manner prescribed by the Division and must contain all the required elements listed on the form.

(3) Workers' compensation insurance carriers must process reimbursement requests from subclaimants pursuant to Chapters 133 and 134 of this title.

(e) [CCH]. A subclaimant may pursue a [CCH] under the provisions of Chapters 140 - 143 of this title (relating to Dispute Resolution).

As noted above, Rule 140.6 provides a subclaimant as described in Section 409.009 is a party to a claim concerning workers' compensation benefits. Additionally, Rule 140.6 establishes that a subclaimant pursuing a claim for reimbursement of a benefit provided to an injured employee and participating in the dispute resolution process, including a CCH, without the participation of the injured employee, must comply with the requirements listed in Rule 140.6(c)(2) and (c)(3). We note the ALJ did not specifically address any of the listed requirements.

COMPENSABLE INJURY

The ALJ determined that the claimant sustained a compensable injury on (date of injury). However, we have reversed and remanded this case for the ALJ to determine whether the employer is barred from pursuing compensability under res judicata based on the decision and order issued on (date), and whether the employer has standing to bring forward this claim as a subclaimant pursuant to Section 409.009 and Rule 140.6. Therefore, we reverse the ALJ's determination that the claimant sustained a compensable injury on (date of injury), and we remand this issue to the ALJ for further action consistent with this decision.

The ALJ failed to identify in her discussion or in a finding of fact a particular theory to base her finding that the claimant was in the course and scope of his employment on the date of injury. Instead, the ALJ relied on four alternate theories presented by the employer at the CCH. It was undisputed the claimant was crossing a public street on foot when he was struck by a truck. We note the Texas Supreme Court stated in *Texas Comp. Ins. Co. v. Matthews*, 519 S.W.2d 630 (Tex. 1974) “no case has extended the ‘access exception’ out into the public streets where other members of the public are subject to the same hazard.” See also *Kelty v. Travelers Ins. Co.*, 391 S.W.2d 558 (Tex. Civ. App.-Dallas 1965, writ ref’d n.r.e.); Appeals Panel Decision (APD) 190602, decided June 3, 2019.

CARRIER 1 LIABILITY

A review of the record reveals that the parties litigated the issue of which carrier would be liable if the ALJ determined the employer has standing to pursue compensability and if the claimant sustained a compensable injury on (date of injury). Although the ALJ did not add the issue as actually litigated, the ALJ made findings of fact, conclusions of law, and a determination that carrier 1 is liable for the claimant’s compensable injury of (date of injury).

Because we have reversed and remanded this case to the ALJ on the issues of res judicata, employer standing, and compensability, we reverse the ALJ’s determination that carrier 1 is liable for the claimant’s compensable injury of (date of injury), and we remand the issue of carrier liability for the (date of injury), injury for further action consistent with this decision.

SUMMARY

We reverse the ALJ’s decision as being incomplete, and we remand this case to the ALJ to add the issue of whether the employer is barred from pursuing compensability under res judicata based on the decision and order issued on (date), and to make findings of fact, conclusions of law, and a decision on that issue.

We remand this case to the ALJ to add the issue of whether the employer has standing to bring forward this claim as a subclaimant pursuant to Section 409.009 and Rule 140.6, and to make findings of fact, conclusions of law, and a decision on that issue.

We reverse the ALJ’s determination that the claimant sustained a compensable injury on (date of injury), and we remand the issue of whether the claimant sustained a compensable injury on (date of injury), for further action consistent with this decision.

We reverse the ALJ's determination that carrier 1 is liable for the claimant's compensable injury of (date of injury), and we remand the issue of carrier liability for the (date of injury), injury for further action consistent with this decision.

REMAND INSTRUCTIONS

On remand the ALJ is to add the issue of whether the employer is barred from pursuing compensability under res judicata based on the decision and order issued on (date), and make findings of fact, conclusions of law, and a decision on that issue. The ALJ is also to add the issue of whether the employer has standing to bring forward this claim as a subclaimant pursuant to Section 409.009 and Rule 140.6. The ALJ is to list the requirements of Rule 140.6 and make specific findings of fact on whether the employer met those requirements, conclusions of law, and a decision on that issue. The ALJ is then to make findings of fact on the specific theory relied upon for course and scope, and conclusions of law and a decision on whether the claimant sustained a compensable injury on (date of injury). Finally, the ALJ is to add the issue of carrier liability and make findings of fact, conclusions of law, and a decision on that issue.

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 Division, 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.

According to the information provided by carrier 1, the true corporate name of the insurance carrier is **INDEMNITY INSURANCE COMPANY OF NORTH AMERICA** 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.**

According to the information provided by carrier 2, the true corporate name of the insurance carrier is **ACE AMERICAN INSURANCE 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