

APPEAL NO. 191801
NOVEMBER 14, 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 September 5, 2019, in (city), Texas, with (administrative law judge) presiding as the administrative law judge (ALJ). The ALJ resolved the disputed issues by deciding that: (1) the respondent (claimant) sustained a compensable injury on (date of injury); (2) the appellant (carrier) is not relieved of liability under Section 409.002 because of the claimant's failure to timely notify his employer pursuant to Section 409.001; and (3) the claimant had disability "from May 7, 2019, but at no other times through the date of the hearing, resulting from a compensable injury sustained on (date of injury)." The carrier appealed, disputing the ALJ's determinations of compensability, timely notice, and disability. The claimant responded, urging affirmance.

DECISION

Affirmed as reformed.

The claimant testified that on (date of injury), there was an explosion at the plant where he was working, and he sustained injuries after lifting a gate to allow others to pass under the gate.

The ALJ is the sole judge of the weight and credibility to 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 ALJ's determination that the claimant sustained a compensable injury on (date of injury), is supported by sufficient evidence and is affirmed.

TIMELY NOTICE TO EMPLOYER

The ALJ's determination that the carrier is not relieved of liability under Section 409.002 because of the claimant's failure to timely notify his employer pursuant to Section 409.001 is supported by sufficient evidence and is affirmed.

DISABILITY

Disability means the inability to obtain and retain employment at wages equivalent to the pre-injury wage because of a compensable injury. Section 401.011(16). The claimant has the burden to prove that he had disability as defined by Section 401.011(16). Disability is a question of fact to be determined by the ALJ. See Appeals Panel Decision (APD) 042097, decided October 18, 2004. Disability can be established by a claimant's testimony alone, even if contradictory of medical testimony. APD 041116, decided July 2, 2004.

In the Background Information section of the decision, the ALJ stated that “[b]ased on the totality of the evidence presented, [the] [c]laimant was unable to earn wages equivalent to his pre-injury wage from May 7, 2019, through the date of the hearing in this matter. [The] [c]laimant’s last date of work was May 6, 2019. Therefore, [the] [c]laimant did have disability from May 7, 2019, through the date of the hearing, resulting from an injury sustained on (date of injury).” However, in Finding of Fact No. 5, Conclusion of Law No. 5, and the decision the ALJ inadvertently left out the ending date of disability. It is clear from her discussion that the ALJ was persuaded based on the evidence presented at the CCH that the claimant had disability from May 7, 2019, through the date of the CCH. Accordingly, we reform Finding of Fact No. 5, Conclusion of Law No. 5, and the decision to include the ending date of disability to reflect the claimant had disability from May 7, 2019, through the date of the CCH.

SUMMARY

We affirm the ALJ's determination that the claimant sustained a compensable injury on (date of injury).

We affirm the ALJ's determination that the carrier is not relieved of liability under Section 409.002 because of the claimant's failure to timely notify his employer pursuant to Section 409.001.

We affirm as reformed Finding of Fact No. 5 that the (date of injury), compensable injury was a cause of the claimant's inability to obtain and retain employment at wages equivalent to his pre-injury wage throughout the period from May 7, 2019, through the date of the CCH, but at no other times.

We affirm as reformed Conclusion of Law No. 5 that the claimant had disability from May 7, 2019, through the date of the CCH, but at no other times.

We affirm as reformed that portion of the decision that the claimant had disability from May 7, 2019, through the date of the CCH, but at no other times resulting from a compensable injury sustained on (date of injury).

The true corporate name of the insurance carrier is **HARTFORD CASUALTY 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.**

Margaret L. Turner
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Carisa Space-Beam
Appeals Judge