

APPEAL NO. 200528
FILED MAY 18, 2020

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 27, 2020, in (city), Texas, with (administrative law judge) presiding as the administrative law judge (ALJ). The ALJ resolved the disputed issues by deciding that: (1) (date of injury), is the date of injury pursuant to Section 408.007, the date the employee knew or should have known the disease may be related to the employment; (2) the appellant/cross-respondent (claimant) did not sustain a compensable repetitive trauma injury; (3) the respondent/cross-appellant (carrier) is not relieved from liability pursuant to Section 409.002 because the claimant timely notified her employer pursuant to Section 409.001; (4) because the claimant did not sustain a compensable injury, she does not have disability from July 3 through October 18, 2019; and (5) the carrier is not relieved from liability under Section 409.004 because the claimant timely filed a claim for compensation with the Texas Department of Insurance, Division of Workers' Compensation (Division) within one year of the injury as required by Section 409.003.

The claimant appealed the ALJ's determinations that she did not sustain a compensable repetitive trauma injury and that she did not have disability from July 3 through October 18, 2019. The claimant specifically notes in her appeal that the ALJ failed to make a finding of fact on the disability issue. The carrier responded, urging affirmance of the ALJ's compensability and disability determinations. The carrier cross-appealed, disputing the ALJ's determinations of the date of injury, timely notice to employer, and timely filing of a claim with the Division. The appeal file does not contain a response to the carrier's cross-appeal.

DECISION

Affirmed in part and reversed and remanded in part.

The claimant testified she injured her left upper extremity when assembling medical kits for the employer. The claimant testified that her job duties were repetitive in nature. The claimant testified that on (date of injury), she sought medical treatment due to increasing pain in her left upper extremity. The medical records in evidence indicate the claimant was given an EMG/NCV of her left upper extremity on July 24, 2019, and was diagnosed with carpal tunnel syndrome of the left wrist.

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).

DATE OF INJURY

The ALJ's determination that the date of injury is (date of injury), pursuant to Section 408.007, the date the employee knew or should have known that the disease was related to her employment is supported by sufficient evidence and is affirmed.

COMPENSABLE REPETITIVE TRAUMA INJURY

The ALJ's determination that the claimant did not sustain a compensable repetitive trauma injury is supported by sufficient evidence and is affirmed.

TIMELY NOTICE TO EMPLOYER

The ALJ's determination that the carrier is not relieved from liability pursuant to Section 409.002 because the claimant timely notified her employer pursuant to Section 409.001 is supported by sufficient evidence and is affirmed.

TIMELY FILING OF A CLAIM

The ALJ's determination that the carrier is not relieved from liability under Section 409.004 because the claimant timely filed a claim for compensation with the Division within one year of the injury as required by Section 409.003 is supported by sufficient evidence and is affirmed.

DISABILITY

Section 410.168 provides that an ALJ's decision contain findings of fact and conclusions of law, a determination of whether benefits are due, and an award of benefits due. Rule 142.16 provides that an ALJ's decision shall be in writing and include findings of fact, conclusions of law, and a determination of whether benefits are due and if so, an award of benefits due.

The ALJ states in Conclusion of Law No. 6, the summary paragraph on page one and Decision section on page five that because the claimant did not sustain a compensable repetitive trauma injury, the claimant does not have disability from July 3 through October 18, 2019, the disability period in dispute. Although the ALJ made a conclusion of law, decision, and addressed the disability period in her discussion of the evidence, the ALJ failed to make a finding of fact whether the claimant had disability

resulting from the claimed injury. Because the ALJ's decision contains no findings of fact regarding the disability issue, which was an issue properly before the ALJ to resolve, it does not comply with Section 410.168 and Rule 142.16. We therefore reverse the ALJ's determination that because the claimant did not sustain a compensable repetitive trauma injury, the claimant does not have disability from July 3 through October 18, 2019, as being incomplete, and we remand the issue of whether the claimant had disability from July 3 through October 18, 2019, resulting from the claimed injury. See Appeals Panel Decision (APD) 132339, decided December 12, 2013; APD 180839, decided, June 4, 2018; and APD 181357, decided July 30, 2018.

SUMMARY

We affirm the ALJ's determination that the date of injury is (date of injury), pursuant to Section 408.007, the date the employee knew or should have known that the disease was related to her employment.

We affirm the ALJ's determination that the claimant did not sustain a compensable repetitive trauma injury.

We affirm the ALJ's determination that the carrier is not relieved from liability pursuant to Section 409.002 because the claimant timely notified her employer pursuant to Section 409.001.

We affirm the ALJ's determination that the carrier is not relieved from liability under Section 409.004 because the claimant timely filed a claim for compensation with the Division within one year of the injury as required by Section 409.003.

We reverse the ALJ's determination that because the claimant did not sustain a compensable repetitive trauma injury, the claimant does not have disability from July 3 through October 18, 2019, as being incomplete, and we remand the issue of whether the claimant had disability from July 3 through October 18, 2019, resulting from the claimed injury.

REMAND INSTRUCTIONS

On remand the ALJ is to make a finding of fact, conclusion of law and a decision regarding whether the claimant had disability from July 3 through October 18, 2019, resulting from the claimed injury.

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.

The true corporate name of the insurance carrier is **XL INSURANCE AMERICA, INC.** 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.**

Margaret L. Turner
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Carisa Space-Beam
Appeals Judge