

APPEAL NO. 201565
FILED DECEMBER 17, 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 (CCH) was held on October 1, 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) the appellant (claimant) did not sustain a compensable injury on (2019, date of injury); (2) the date of injury (DOI) is (2018, date of injury); (3) the respondent (carrier) is relieved from liability under Section 409.002 because of a failure by the claimant to notify his employer pursuant to Section 409.001; and (4) the carrier is relieved from liability under Section 409.004 because of the claimant's failure to timely file 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, disputing the ALJ's compensability, DOI, and timely notice to the employer determinations. The carrier responded, urging affirmance of the ALJ's compensability, DOI, and timely notice to the employer determinations.

The ALJ's determination the carrier is relieved from liability under Section 409.004 because of the claimant's failure to timely file a claim for compensation with the Division within one year of the injury as required by Section 409.003 was not appealed and has become final pursuant to Section 410.169.

DECISION

Reversed and remanded.

The claimant worked as a delivery driver for the employer for approximately 30 years. The evidence indicates that he attended an annual physical exam with a physician's assistant on (2018, date of injury), in which one of the claimant's chief complaints was lower abdominal pain. The medical record also indicates that the claimant stated that he had a tightening/cramping sensation in his lower abdomen while exercising. The physician's assistant noted that all hernial sites were normal. The claimant testified that the physician's assistant informed him that if his stomach popped out, it could be a hernia. The carrier argued at the hearing that (2018, date of injury), was the correct DOI because it was the date that the claimant knew or should have known that he had an injury that was related to the employment.

The claimant attended a subsequent annual exam the following year on (day before 2019, date of injury). The medical record indicates that the claimant had a medical history of possible inguinal hernia, and the claimant testified that he was told by

the doctor at this visit that he had a possible hernia that should be evaluated by a specialist. The claimant indicated that he notified his employer the following day, (2019, date of injury), of the claimed injury. The claimant argued at the CCH that (2019, date of injury), was the correct DOI because he was told by the doctor that he had a hernia; however, as mentioned above, we note that the medical record shows that the exam at which he was informed of the hernia was on (date before 2019, date of injury).

The claimant was referred to a surgeon, (Dr. H), for a left inguinal hernia consult. The medical record from that visit dated February 1, 2019, states that the claimant noted that he had discomfort one year prior that began while running. Dr. H recommended repair for a non-recurrent unilateral inguinal hernia without obstruction or gangrene; however, the claimant stated he wanted to wait.

The ALJ stated in the Discussion section of her decision and order that the more persuasive evidence shows that the claimant's DOI is (2018, date of injury), and she further made a determination that the DOI is (2018, date of injury). However, we note that the ALJ failed to make a conclusion of law or a determination regarding whether the claimant sustained a compensable injury on (2018, date of injury), the DOI as determined by the ALJ. Instead, Conclusion of Law No. 3 states that the claimant did not sustain a compensable injury on (2019, date of injury), which was not determined to be the DOI in this case. The ALJ made conflicting and inconsistent determinations regarding the issues of compensability and DOI.

Therefore, we reverse the ALJ's determinations that the claimant did not sustain a compensable injury on (2019, date of injury), and that the DOI is (2018, date of injury), and remand those issues back to the ALJ for further action consistent with this decision.

As the issue of timely reporting to the employer is contingent on the DOI determination, we also reverse the ALJ's determination that the carrier is relieved from liability under Section 409.002 because of a failure by the claimant to notify his employer pursuant to Section 409.001 and remand this issue back 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 on (2019, date of injury), and we remand the issue of compensability to the ALJ for further action consistent with this decision.

We reverse the ALJ's determination that the DOI is (2018, date of injury), and we remand the issue of DOI to the ALJ for further action consistent with this decision.

We reverse the ALJ's determination that the carrier is relieved from liability under Section 409.002 because of a failure by the claimant to notify his employer pursuant to Section 409.001, and we remand the issue of whether the carrier is relieved from liability under Section 409.002 because of a failure by the claimant to notify his employer pursuant to Section 409.001 to the ALJ for further action consistent with this decision.

REMAND INSTRUCTIONS

On remand, the ALJ should amend the compensability issue to remove the DOI. The ALJ should determine which date is the correct DOI and make findings of fact, a conclusion of law, and a determination regarding the DOI in this case that is consistent and supported by the evidence. The ALJ should then make findings of fact, a conclusion of law, and a determination regarding whether the claimant sustained a compensable injury on the DOI as determined by the ALJ. Finally, the ALJ should make findings of fact, a conclusion of law, and a determination regarding whether the carrier is relieved from liability under Section 409.002 because of a failure by the claimant to 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 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 Appeals Panel Decision 060721, decided June 12, 2006.

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 75201-3136.**

Cristina Beceiro
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge