

APPEAL NO. 210218
FILED APRIL 14, 2021

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 October 28, 2020, and January 11, 2021, 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), for workers' compensation purposes, was not an employee of (employer), at the time of the claimed injury on (date of injury); (2) the claimant did not sustain a compensable injury on (date of injury); (3) the respondent (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; and (4) because the claimant did not sustain a compensable injury, the claimant did not have disability from June 30, 2018, through September 1, 2018. The claimant appealed the ALJ's determinations. The carrier responded, urging affirmance of the ALJ's determinations.

DECISION

Affirmed in part and reversed and rendered in part.

The claimant testified that on (date of injury), he was injured when he was rear-ended while driving his taxi.

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).

EMPLOYEE OR INDEPENDENT CONTRACTOR

The ALJ's determination that the claimant, for workers' compensation purposes, was not an employee of (employer), at the time of the claimed injury on (date of injury), is supported by sufficient evidence and is affirmed.

COMPENSABLE INJURY

The ALJ's determination that the claimant did not sustain a compensable injury on (date of injury), is supported by sufficient evidence and is affirmed.

DISABILITY

The ALJ's determination that because the claimant did not sustain a compensable injury, the claimant did not have disability from June 30, 2018, through September 1, 2018, is supported by sufficient evidence and is affirmed.

TIMELY NOTICE TO EMPLOYER

The ALJ noted in her discussion that the claimant credibly testified he notified his dispatcher on the date of injury and that his dispatcher provided transportation for him from the hospital. The ALJ further noted that if the claim was found to be compensable, the carrier is not relieved of liability since the claimant contacted his employer, or someone in a supervisory position with the employer, within 30 days of the date of injury. The ALJ found in Finding of Fact No. 8 that the claimant notified the employer, or an employee holding a supervisory or management position, of the (date of injury), injury within 30 days of the date of injury. The ALJ also found in Finding of Fact No. 9 that because there is no compensable injury, the issue as to the timely reporting of an injury to the claimed employer is moot. However, Conclusion of Law No. 5, the Decision, and the Decision and Order paragraph on the first page of the decision all state that 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. The ALJ made inconsistent and conflicting findings of fact and determinations regarding the issue of timely notice to the employer. Usually, a case in which the ALJ makes inconsistent and conflicting findings of fact and determinations on a disputed issue will be remanded to the ALJ to make determinations that are consistent and supported by the evidence. See *generally* Appeals Panel Decision 171955, decided October 17, 2017. However, in the instant case we have affirmed the ALJ's determination that the claimant did not sustain a compensable injury on (date of injury). The ALJ's finding of fact that because there is no compensable injury the issue as to the timely reporting of an injury to the claimed employer is moot is legally correct. Therefore, under the circumstances in this case, we reverse the ALJ's determination that 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, and we render a new decision that because there is no compensable injury the issue as to the timely reporting of an injury to the claimed employer is moot.

SUMMARY

We affirm the ALJ's determination that the claimant, for workers' compensation purposes, was not an employee of (employer), at the time of the claimed injury on (date of injury).

We affirm the ALJ's determination that the claimant did not sustain a compensable injury on (date of injury).

We affirm the ALJ's determination that because the claimant did not sustain a compensable injury, the claimant did not have disability from June 30, 2018, through September 1, 2018.

We reverse the ALJ's determination that 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, and we render a new decision that because there is no compensable injury the issue as to the timely reporting of an injury to the claimed employer is moot.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**RICHARD J. GERGASKO, PRESIDENT
2200 ALDRICH STREET
AUSTIN, TEXAS 78723.**

Carisa Space-Beam
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Margaret L. Turner
Appeals Judge