

APPEAL NO. 210517
FILED JUNE 3, 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 (CCH) was held on March 1, 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 (carrier) is liable for payment of accrued benefits pursuant to 28 TEX. ADMIN. CODE § 124.3 (Rule 124.3) resulting from its failure to dispute or initiate the payment of benefits within 15 days of the date it received written notice of the injury; and (2) the respondent (claimant) had disability resulting from the compensable injury of (date of injury), from March 31, 2020, through the present. The carrier appealed, disputing the ALJ's determinations. The appeal file does not contain a response from the claimant to the carrier's appeal.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury), which extends to a lumbar strain. The claimant testified he was working with a coworker on (date of injury), inspecting a tank to be moved from its location in (state) to a different location. The claimant testified he was on top of the tank and injured his low back while reaching down and lifting up a heavy metal piece called a stinger his coworker handed up to him.

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).

DISABILITY

The ALJ's determination that the claimant had disability resulting from the compensable injury of (date of injury), from March 31, 2020, through the present is supported by sufficient evidence and is affirmed.

CARRIER LIABILITY FOR BENEFITS UNDER RULE 124.3

Rule 124.3(a)(1) provides in pertinent part that if the carrier does not file a Notice of Denial by the 15th day after receipt of the written notice of the injury, the carrier is liable for any benefits that accrue and shall initiate benefits in accordance with this section. Rule 124.3(a)(2) provides that if the carrier files a Notice of Denial after the 15th day but on or before the 60th day after receipt of written notice of the injury: (A) the carrier is liable for and shall pay all income benefits that had accrued and were payable prior to the date the carrier filed the Notice of Denial and only then is it permitted to suspend payment of benefits; and (B) the carrier is liable for and shall pay for all medical services, in accordance with the 1989 Act and Texas Department of Insurance, Division of Workers' Compensation (Division) Rules, provided prior to the filing of the Notice of Denial. Rule 124.3(a)(3) provides that the carrier shall not file notice with the Division that benefits will be paid as and when they accrue with the Division. Rule 124.3(a)(4) provides in pertinent part that a carrier's failure to file a Notice of Denial by the 15th day after it receives written notice of an injury constitutes the carrier's acceptance of the claim as a compensable injury, subject to the carrier's ability to contest compensability on or before the 60th day after receipt of written notice of the injury, and that a carrier's failure to do so results in the carrier being liable for all accrued income and medical benefits. Finally, Rule 124.3(a)(5) provides in pertinent part that a carrier commits an administrative violation if, not later than the 15th day after it receives written notice of the injury, it does not begin to pay benefits as required or file a Notice of Denial of the compensability of a claim.

The ALJ noted in his discussion that the carrier received written notice of the claimed injury on September 15, 2020, when the claimant's attorney faxed the Employee's Claim for Compensation for a Work-Related Injury or Occupational Disease (DWC-41) to the carrier, and that the 15th day after the carrier received notice was September 30, 2020. The ALJ further noted that the carrier filed a dispute on January 6, 2021. The ALJ found that the carrier did not file a denial disputing the claim with the Division by the 15th day after it received written notice of the injury and therefore determined that the carrier is liable for payment of accrued benefits pursuant to Rule 124.3 resulting from its failure to dispute or initiate the payment of benefits within 15 days of the date it received written notice of the injury.

The carrier argues on appeal that it had accepted compensability of the claimant's (date of injury), injury, and contends that the ALJ in this case confuses a Notice of Denial of Compensability/Liability and Refusal to Pay Benefits (PLN-1) with a Notice of Disputed Issue(s) and Refusal to Pay Benefits (PLN-11). The carrier also contends that because it had accepted the claimant's (date of injury), injury as compensable, Rule 124.3 does not apply in this case.

In evidence is a PLN-11 dated January 6, 2021, in which the carrier stated it did not agree the “[claimant’s] work-related injury [of (date of injury),] stops [the claimant] from getting or keeping a job that pays what [the claimant] earned [prior to that injury] (existence, duration, or extent of disability).” The carrier also stated in this PLN-11 that it did not agree that “some of [the claimant’s] medical conditions were caused by [the claimant’s (date of injury),] work-related injury (extent of injury).” The carrier did not state in the PLN-11 that it was disputing compensability or liability of the (date of injury), injury, and the evidence does not contain a PLN-1 from the carrier denying compensability or liability of the (date of injury), injury. In Appeals Panel Decision (APD) 072002-s, decided December 20, 2007, the Appeals Panel noted that the “preamble to Rule 124.3 states a dispute of benefit entitlement, i.e.[,] disability and entitlement to [temporary income benefits], is not a dispute of compensability/liability. . . .” The carrier’s January 6, 2021, PLN-11 was a dispute of benefit entitlement, not a dispute of compensability or liability of the (date of injury), injury. The evidence did not establish that the carrier has filed a dispute of compensability or liability of that injury, and as noted above, the parties stipulated at the CCH that the claimant sustained a compensable injury on (date of injury). We reverse the ALJ’s determination that the carrier is liable for payment of accrued benefits pursuant to Rule 124.3, resulting from its failure to dispute or initiate the payment of benefits within 15 days of the date it received written notice of the injury. We render a new decision that the carrier is liable for the payment of accrued benefits in accordance with this decision. See APD 101679, decided December 30, 2010.

SUMMARY

We affirm the ALJ’s determination that the claimant had disability resulting from the compensable injury of (date of injury), from March 31, 2020, through the present.

We reverse the ALJ’s determination that the carrier is liable for payment of accrued benefits pursuant to Rule 124.3, resulting from its failure to dispute or initiate the payment of benefits within 15 days of the date it received written notice of the injury. We render a new decision that the carrier is liable for the payment of accrued benefits in accordance with this decision.

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

**CORPORATION SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701-3218.**

Carisa Space-Beam
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Margaret L. Turner
Appeals Judge