APPEAL NO. 211005
FILED AUGUST 25, 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 May 12, 2021, with the record closing on May 18, 2021, in (city), Texas, with (administrative law judge) presiding as the administrative law judge (ALJ). The ALJ resolved the disputed issue by deciding that the appellant (claimant) did not sustain a compensable injury in the form of an occupational disease with a date of injury of (date of injury). The claimant appealed, disputing the ALJ's determination that he did not sustain a compensable injury. The respondent (self-insured) responded, urging affirmance.

DECISION

Reversed and remanded.

The claimant worked as a senior patrol officer for (county) County. The claimant testified that on (date of injury), he was dispatched to respond to a call regarding a death in a private residence. The claimant testified that he was notified prior to his arrival at the call that the residents of the home had tested positive for coronavirus 2019 (COVID-19). The claimant testified he spent 3 to 4 hours at the scene. The claimant traveled by airplane to (city), (state), for a short vacation on (the day after the date of injury). After experiencing a fever and body aches along with a cough, the claimant tested for COVID-19 on (two days after the date of injury), which yielded a positive result.

At issue was whether the claimant sustained a compensable injury in the form of an occupational disease on (date of injury). The parties argued at the CCH about the applicability of Section 607.054 of the Texas Government Code. Section 607.054 of the Government Code provides, in part, that a firefighter, peace officer, or emergency medical technician who suffers from tuberculosis, or any other disease or illness of the lungs or respiratory tract that has a statistically positive correlation with service as a firefighter, peace officer, or emergency medical technician, that results in death or total or partial disability is presumed to have contracted the disease or illness during the course and scope of employment as a firefighter, peace officer, or emergency medical technician. In her discussion of the evidence the ALJ correctly noted that the record contains no authoritative evidence addressing any statistical correlation between the claimant's COVID-19 infection and his service as a peace officer. The ALJ stated that for this reason the evidence failed to raise a presumption that the claimant's COVID-19 infection was contracted in the course and scope of his employment.

Section 401.011(34) provides that "occupational disease" means a disease arising out of and in the course of employment that causes damage or harm to the physical structure of the body, including a repetitive trauma injury. The term includes a disease or infection that naturally results from the work-related disease. The term does not include an ordinary disease of life to which the general public is exposed outside of employment, unless that disease is an incident to a compensable injury or occupational disease. Expert medical testimony is necessary to establish the cause of the claimant's disease. *See generally Houston General Insurance Company v. Pegues*, 514 S.W.2d 492 (Tex. Civ. App.—Texarkana 1974, writ ref'd n.r.e.), *Schaefer v. Texas Employers' Insurance Association*, 612 S.W.2d 199 (Tex. 1980). The question in this case is whether there is a causal connection between COVID-19 and the claimant's employment as established by medical evidence.

The ALJ found that the claimant's employment did not place him at greater risk of a COVID-19 infection than employment generally. Accordingly, the ALJ determined that the claimant did not sustain a compensable injury, in the form of an occupational disease, with a date of injury of (date of injury).

The claimant testified regarding Senate Bill (S.B.) 22 of the 87th Leg., R.S. (2021) at the CCH but stated he did not know if at that time it had been signed into law. S.B. 22 added a subsection (b) to Section 607.054 of the Government Code which provides this section does not apply to a claim that a firefighter, peace officer, or emergency medical technician suffers from severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) or COVID-19.

S.B. 22 provided an additional section to specifically cover SARS-CoV-2 and COVID-19 for detention officers, custodial officers, firefighters, peace officers, and emergency medical technicians. Section 607.0545(a) of the Government Code provides, in pertinent part, that a peace officer who suffers from COVID-19 that results in death or total or partial disability is presumed to have contracted the virus or disease during the course and scope of employment as a peace officer if the peace officer is: (1) employed in the area designated in a disaster declaration by the governor under Section 418.014 of the Government Code or another law and the disaster is related to COVID-19; and (2) contracts the disease during the disaster declared by the governor described above. On March 13, 2020, the governor declared a state of disaster in Texas due to COVID-19.

Section 607.0545(b) of the Government Code provides, in pertinent part, the presumption only applies to specified persons including a peace officer employed on a full-time basis who is diagnosed with COVID-19 using a test authorized, approved, or licensed by the United States Food and Drug Administration. *See* Section

607.0545(b)(1) and (2)(A) of the Government Code. Section 607.0545(b)(3) of the Government Code further provides, in pertinent part, that the presumption only applies to a peace officer who was last on duty not more than 15 days before the date the person is diagnosed with COVID-19 using a test described by Section 607.0545(b)(2)(A) of the Government Code.

Section 607.058(a) of the Government Code provides, in part, that the presumption established in Section 607.0545 of the Government Code is rebuttable. Section 607.058(b) of the Government Code provides, in pertinent part, that any rebuttal offered must include a statement by the person offering the rebuttal that describes, in detail, the evidence that the person reviewed before making the determination that a cause not associated with the individual's service as a peace officer was a substantial factor in bringing about the individual's disease or illness without which the disease or illness would not have occurred.

Section 607.058(c) of the Government Code provides, in pertinent part, that an ALJ in addressing an argument based on a rebuttal must make findings of fact and conclusions of law that consider whether a qualified expert, relying on evidence-based medicine, stated the opinion that, based on reasonable medical probability, an identified risk factor, accident, hazard, or other cause not associated with the individual's service as a peace officer was a substantial factor in bringing about the individual's disease or illness, without which the disease or illness would not have occurred. Section 607.058(d) provides, in pertinent part, that a rebuttal to a presumption under Section 607.0545 of the Government Code may not be based solely on evidence relating to the risk of exposure to COVID-19 of a person with whom a peace officer resides.

S.B. 22 provides that a person subject to Section 607.0545 of the Government Code who on or after the date the governor declared a disaster under Chapter 418 of the Government Code relating to COVID-19 but before the effective date of S.B. 22 may file a claim for benefits related to COVID-19 on or after the effective date of S.B. 22 regardless of whether the claim is otherwise considered untimely and the changes in law made by S.B. 22 apply to that claim.

The ALJ correctly determined that the presumption set forth in Section 607.054 of the Government Code did not apply. However, S.B. 22 makes clear that the presumption set forth in Section. 607.0545 of the Government Code applies to claims, like the one in the instant case, that were pending at the time the law went into effect. *See* Appeals Panel Decision (APD) 211026-s, decided August 20, 2021. S.B. 22 became effective on June 14, 2021, a date after the CCH was held in this case and a decision was issued. However, because this claim was pending at the time S.B. 22 went into effect, we reverse the ALJ's determination that the claimant did not sustain a

compensable injury in the form of an occupational disease with a date of injury of (date of injury), and remand this case back to the ALJ. On remand, the ALJ is to apply the provisions set forth in Sections 607.0545 and 607.058 of the Government Code and make a determination of whether the claimant sustained a compensable injury in the form of an occupational disease with a date of injury of (date of 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 Texas Department of Insurance, Division of Workers' Compensation, 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 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 **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

NAME
ADDRESS
CITY, TEXAS ZIP CODE.

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Margaret L. Turner
Appeals Judge

CONCUR:

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Cristina Beceiro
Appeals Judge

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Carisa Space-Beam
Appeals Judge