

APPEAL NO. 211064
FILED SEPTEMBER 1, 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 November 2, 2020, and May 17, 2021, with the record closing on June 8, 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) did not sustain a compensable repetitive trauma injury; (2) the date of injury is (date of injury); (3) respondent 1 (carrier 1) and respondent 2 (carrier 2) are relieved from liability under Section 409.002 because of the claimant's failure to timely notify his employer pursuant to Section 409.001; (4) carrier 1 and carrier 2 are relieved from liability 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; and (5) because the claimant did not sustain a compensable injury, the claimant did not have disability as a result of the claimed injury from March 9, 2020, to the date of the CCH. The claimant appealed, disputing the ALJ's determinations of compensability, date of injury, timely notice to employer, timely filing of a claim, and disability. Both carrier 1 and carrier 2 responded, urging affirmance of the disputed determinations.

DECISION

Affirmed in part and reversed and remanded in part.

The claimant testified that he injured his left arm because of repetitive activities performed in the course and scope of his employment.

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 is supported by sufficient evidence and is affirmed. This is so even though another fact finder might have drawn other inferences and reached other

conclusions. *Salazar, et al. v. Hill*, 551 S.W.2d 518 (Tex. Civ. App.—Corpus Christi 1977, writ ref'd n.r.e.).

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.

DISABILITY

The ALJ's determination that because the claimant did not sustain a compensable injury, the claimant did not have disability resulting from the claimed injury from March 9, 2020, to the date of the CCH is supported by sufficient evidence and is affirmed.

TIMELY NOTICE TO EMPLOYER

The ALJ's determination that carrier 1 and carrier 2 are relieved from liability under Section 409.002 because of the claimant's failure to timely notify his employer pursuant to Section 409.001 is supported by sufficient evidence and is affirmed.

TIMELY FILING OF A CLAIM

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. 28 Tex. Admin. Code §142.16 (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 pages 9 and 10 that carrier 1 and carrier 2 are relieved from liability 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. Although the ALJ made a conclusion of law, decision, and discussed the timely filing of a claim in his discussion of the evidence, the ALJ failed to make a finding of fact whether the claimant timely filed a claim for compensation with the Division. Because the ALJ's decision contains no findings of fact regarding the timely filing 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 carrier 1 and carrier 2 are relieved from liability 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 as being incomplete, and we remand the issue of timely filing of a claim for

compensation. See Appeals Panel Decision (APD) 132339, decided December 12, 2013, and APD 180839, decided, June 4, 2018.

SUMMARY

We affirm the ALJ's determination that the date of injury is (date of injury), pursuant to Section 408.007.

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

We affirm the ALJ's determination that because the claimant did not sustain a compensable injury, the claimant did not have disability resulting from the claimed injury from March 9, 2020, to the date of the CCH.

We affirm the ALJ's determination that carrier 1 and carrier 2 are relieved from liability under Section 409.002 because of the claimant's failure to timely notify his employer pursuant to Section 409.001.

We reverse the ALJ's determination that carrier 1 and carrier 2 are relieved from liability 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 as being incomplete, and we remand the issue of timely filing of a claim for compensation to the ALJ for further action consistent with this decision.

REMAND INSTRUCTIONS

On remand the ALJ is to make a finding of fact, conclusion of law, and a decision regarding whether carrier 1 and carrier 2 are relieved from liability 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.

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 1 is **ACE AMERICAN INSURANCE COMPANY** 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.**

The true corporate name of the insurance carrier 2 is **ELECTRIC INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**C T CORPORATION SYSTEM
1999 BRYAN STREET SUITE 900
DALLAS, TEXAS 75201-3136.**

Margaret L. Turner
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Carisa Space-Beam
Appeals Judge