

APPEAL NO. 220510
FILED MAY 19, 2022

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 February 15, 2022, 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 (date of injury); and (2) the claimed injury occurred while the claimant was in a state of intoxication as defined by Section 401.013; therefore, the respondent (carrier) is relieved of liability for compensation.

The claimant appealed, disputing the ALJ's determinations regarding compensability and intoxication. The carrier responded, urging affirmance of the disputed issues.

DECISION

Reversed and remanded.

The parties stipulated, in part, that the claimant sustained damage or harm to the physical structure of his body while in the course and scope of his employment on (date of injury). The evidence indicates that the claimant was injured on (date of injury), while working as a shop manager, when a foam-filled Bobcat tire fell towards him. The claimant caught the tire and lifted it back and felt a pull in his right biceps. The claimant was later diagnosed with a right biceps muscle tear.

INTOXICATION

Section 406.032(1)(A) provides that the carrier is not liable for compensation if the injury occurred while the employee was in a state of intoxication. Section 401.013(a)(2)(B) defines intoxication as not having the normal use of mental or physical faculties resulting from the voluntary introduction into the body of a controlled substance or controlled substance analogue, as defined by Section 481.002, of the Health and Safety Code. Section 401.013(c), amended effective September 1, 2005, provides that "[o]n the voluntary introduction into the body of any substance listed under Subsection (a)(2)(B), based on a blood test or urinalysis, it is a rebuttable presumption that a person is intoxicated and does not have the normal use of mental or physical faculties."

In the present case, the evidence indicates that a urine drug screen was taken on (date of injury), which confirmed a positive result for marijuana. In his decision, the ALJ correctly stated that the evidence was sufficient to create a rebuttable presumption of intoxication under Section 401.013(c). In order to rebut the presumption, the claimant testified that he had the normal use of his physical and mental faculties and additionally provided statements from four co-workers to that effect. Regarding the statements in evidence, the ALJ stated in his decision that “[w]hile the witness statements presented some evidence that [the] [c]laimant had the normal use of his physical faculties, they could not support that [the] [c]laimant had the normal use of his mental faculties, as the witnesses did not seem to possess proper professional training to recognize the mental effects of intoxication.”

In Appeals Panel Decision (APD) 062507-s, decided January 31, 2007, the Appeals Panel held that an ALJ erred in failing to make a finding regarding a positive drug screen for amphetamines which resulted in a rebuttable presumption of intoxication for amphetamines, referencing Section 401.013(c). The Appeals Panel also noted that it disagreed with the carrier’s argument that under the 2005 amendment to Section 401.013(c), establishing a rebuttable presumption of intoxication based on a blood test or urinalysis, an injured worker’s lay testimony could not be considered sufficient to overcome the legal presumption of intoxication. See *also* APD 021667, decided August 6, 2002, in which the Appeals Panel stated they decline to reconsider the prior determination that lay testimony, including the testimony of the claimant, is probative evidence on the issue of whether the claimant had the normal use of his mental and physical faculties at the time of his injury.

The ALJ is requiring expert evidence with regard to whether the claimant had the normal use of his mental and physical faculties at the time of the claimed injury. Although the ALJ could accept or reject in whole, or in part, the claimant’s testimony or other evidence, the ALJ is requiring a higher standard than is required under the law, as cited in this decision, to rebut the presumption of intoxication. Accordingly, we reverse the ALJ’s determination that the claimed injury occurred while the claimant was in a state of intoxication as defined by Section 401.013; therefore, the carrier is relieved of liability for compensation, and we remand the issue of whether the claimed injury occurred while the claimant was in a state of intoxication as defined by Section 401.013, relieving the carrier of liability for compensation to the ALJ to make a determination consistent with this decision.

COMPENSABILITY

Given that we have reversed the ALJ’s intoxication determination and remanded that issue to the ALJ to make a determination applying the correct legal standard

consistent with this decision, we also reverse the ALJ's determination that the claimant did not sustain a compensable injury on (date of injury), and we remand the issue of whether the claimant sustained a compensable injury on (date of injury), to the ALJ to make a determination consistent with this decision.

SUMMARY

We reverse the ALJ's determination that the claimed injury occurred while the claimant was in a state of intoxication as defined by Section 401.013; therefore, the carrier is relieved of liability for compensation and we remand the issue of whether the claimed injury occurred while the claimant was in a state of intoxication as defined by Section 401.013, relieving the carrier of liability for compensation to the ALJ to make a determination consistent with this decision.

We reverse the ALJ's determination that the claimant did not sustain a compensable injury on (date of injury), and we remand the issue of whether the claimant sustained a compensable injury on (date of injury), to the ALJ to make a determination consistent with this decision.

REMAND INSTRUCTIONS

On remand, the ALJ should analyze the evidence in the record using the correct standard to determine whether the claimant met his burden of proof to rebut the presumption of intoxication and make a determination regarding whether the claimed injury occurred while the claimant was in a state of intoxication as defined by Section 401.013, relieving the carrier of compensation.

The ALJ is to make a determination regarding whether the claimant sustained a compensable injury on (date of injury), which is supported by the evidence and consistent with this decision.

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 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 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.**

Cristina Beceiro
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge