

APPEAL NO. 230230  
FILED MARCH 20, 2023

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 December 29, 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 date of injury is (date of injury); (2) the appellant (claimant) did not sustain a compensable repetitive trauma injury on (date of injury); (3) the respondent (self-insured) is relieved from liability under Section 409.002 because the claimant did not timely notify her employer pursuant to Section 409.001; (4) the self-insured is relieved from liability under Section 409.004 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 on (date of injury), the claimant did not have disability resulting from the claimed injury. The claimant appealed, disputing the ALJ's determinations regarding compensability, timely reporting, timely filing, and disability. The self-insured responded, urging affirmance of the appealed determinations.

The ALJ's determination that the date of injury is (date of injury), was not appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated, in part, that the date of injury is (date of injury). The claimant testified that she was injured while working as a Life Skills Aide due to the repetitious actions of lifting, clothing, and feeding disabled children who weighed between 80 and 100 pounds.

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).

COMPENSABILITY

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

### **TIMELY FILING**

The ALJ's determination that the self-insured is relieved from liability under Section 409.004 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 is supported by sufficient evidence and is affirmed.

### **DISABILITY**

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

### **TIMELY REPORTING**

The parties stipulated that the date of injury in this case is (date of injury). Additionally, the ALJ found that on January 4, 2021, the claimant reported the claimed injury to the employer. This finding is supported by sufficient evidence.

Section 409.001(a)(2) provides that, if the injury is an occupational disease, an employee or a person acting on the employee's behalf shall notify the employer of the employee of an injury not later than the 30th day after the date on which the employee knew or should have known that the injury may be related to the employment.

The ALJ determined that the claimant did not timely report her work injury to the employer because January 4, 2021, is more than 30 days from the claimed injury and that because the claimant did not timely report her injury, the self-insured is relieved of liability under Section 409.002. We conclude that the ALJ erred in determining that the claimant did not timely report her injury because the 30th day after (date of injury), was Saturday, January 2, 2021, and the claimant gave notice on the next working day, Monday, January 4, 2021. During the time period under consideration, 28 Tex. Admin. Code § 102.3(a)(3) (Rule 102.3(a)(3)) provided that, if the last day of any period is not a working day, the period is extended to include the next day that is a working day. A working day is defined in Rule 102.3(b). In Appeals Panel Decision (APD) 950658, decided June 12, 1995, the Appeals Panel, citing Sections 311.014(a) and (b) of the Code Construction Act and Rule 102.3(a), held that where the 30th day after the date of injury was a Sunday, notice of injury was timely when given on the next working day, a Monday. See *also* APD 002549, decided December 11, 2000; and APD 160634, decided May 24, 2016. Accordingly, we reverse the ALJ's determination that the self-insured is

relieved from liability under Section 409.002 because the claimant failed to timely notify her employer pursuant to Section 409.001 and render a new decision that the self-insured is not relieved from liability under Section 409.002 because the claimant timely notified her employer pursuant to Section 409.001.

### **SUMMARY**

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

We affirm the ALJ's determination that the self-insured is relieved from liability under Section 409.004 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.

We affirm the ALJ's determination that because the claimant did not sustain a compensable injury on (date of injury), the claimant did not have disability resulting from the claimed injury.

We reverse the ALJ's determination that the self-insured is relieved from liability under Section 409.002 because the claimant failed to timely notify her employer pursuant to Section 409.001 and render a new decision that the self-insured is not relieved from liability under Section 409.002 because the claimant timely notified her employer pursuant to Section 409.001.

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), (STATE) (ZIP CODE).**

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Cristina Beceiro  
Appeals Judge

CONCUR:

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Carisa Space-Beam  
Appeals Judge

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Margaret L. Turner  
Appeals Judge