

APPEAL NO. 230296
FILED APRIL 28, 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 January 12, 2023, 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 not relieved from liability under Section 409.004 because of the respondent's (claimant) 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, because neither the employer nor the carrier contested the claim until after the Employee's Claim for Compensation for a Work-Related Injury or Occupational Disease (DWC-41) was filed; and (2) the claimant had disability from April 6, 2020, through January 30, 2022, resulting from the compensable injury sustained on (date of injury).

The carrier appealed 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 remanded in part.

The parties stipulated, in part, that: (1) the Division appointed (Dr. S) as the designated doctor to address maximum medical improvement (MMI) and impairment rating (IR); (2) if it is determined that the claimant sustained a compensable injury on (date of injury), the compensable injury extends to at least the conditions rated by Dr. S; (3) if it is determined that the claimant sustained a compensable injury on (date of injury), the claimant reached MMI on January 30, 2022, with a four percent IR; and (4) the date of statutory MMI is January 30, 2022.

The claimant, who was working in the employer's warehouse, was injured on (date of injury), when he pulled on a rope to close a loading dock door. The claimant testified that he lost consciousness at the time of the injury.

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).

TIMELY FILING

The ALJ's determination that the carrier is not 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

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.

A review of the record indicates that the issue of whether the claimant had disability from April 6, 2020, through January 30, 2022, resulting from the compensable injury sustained on (date of injury), was a certified issue in this case. The ALJ states in Conclusion of Law No. 4 and in the Decision section the claimant had disability from April 6, 2020, through January 30, 2022, resulting from the compensable injury sustained on (date of injury). Although the ALJ made a conclusion of law, decision, and addressed the issue in his discussion of the evidence, the ALJ failed to make a finding of fact regarding the disability issue. Because the ALJ's decision contains no findings of fact regarding the disability issue, it does not comply with Section 410.168 and Rule 142.16. We therefore reverse the ALJ's determination that the claimant had disability from April 6, 2020, through January 30, 2022, resulting from the compensable injury sustained on (date of injury), as being incomplete, and we remand the issue of whether the claimant had disability from April 6, 2020, through January 30, 2022, resulting from the compensable injury sustained on (date of injury), to the ALJ for further action consistent with this decision. See Appeals Panel Decision (APD) 132339, decided December 12, 2013; APD 180839, decided June 4, 2018; and APD 181357, decided July 30, 2018.

SUMMARY

We affirm the ALJ's determination that the carrier is not 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 reverse the ALJ's determination that the claimant had disability from April 6, 2020, through January 30, 2022, resulting from the compensable injury sustained on (date of injury), as being incomplete, and we remand the issue of whether the claimant had disability from April 6, 2020, through January 30, 2022, resulting from the compensable injury sustained on (date of injury), 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 the claimant had disability from April 6, 2020, through January 30, 2022, resulting from the compensable injury sustained on (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 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 is **XL INSURANCE AMERICA, INC.** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
1999 BRYAN STREET, SUITE 900
DALLAS, TEXAS 75201-4284.**

Cristina Beceiro
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge