

APPEAL NO. 230302  
FILED APRIL 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 (CCH) was held on November 15, 2022, with the record closing on January 18, 2023, in (city), Texas, with (administrative law judge). presiding as the administrative law judge (ALJ). The ALJ resolved the disputed issues by determining that: (1) the respondent/cross-appellant (claimant) had disability from August 14, 2021, through April 4, 2022, resulting from the compensable injury of (date of injury); (2) the claimant's average weekly wage (AWW) is \$908.46; and (3) the appellant/cross-respondent (carrier) is liable for the payment of accrued benefits through December 27, 2021, pursuant to 28 Tex. Admin. Code § 124.3 (Rule 124.3) resulting from its failure to dispute or initiate payment of benefits within 15 days of the date it received written notice of the injury.

The carrier appealed, disputing the ALJ's determinations of disability and carrier liability pursuant to Rule 124.3. The claimant responded, urging affirmance of those determinations. The claimant cross-appealed, disputing the ALJ's AWW determination. The carrier responded, urging affirmance of that determination.

DECISION

Reformed in part, affirmed in part, and reversed and rendered in part.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury), that extends to at least a disc herniation at L4-5. We note the stipulation addressed in Finding of Fact No. 1.D. incorrectly identifies a disc herniation at C4-5 rather than L4-5. We reform Finding of Fact No. 1.D. to state the claimant sustained a compensable injury on (date of injury), that extends to at least a disc herniation at L4-5 to correctly reflect the stipulation made by the parties at the CCH. The claimant, a player for the (employer), was injured on (date of injury), in a preseason game.

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).

## **DISABILITY**

The ALJ's determination that the claimant had disability from August 14, 2021, through April 4, 2022, is supported by sufficient evidence and is affirmed.

## **AWW**

The ALJ's determination that the claimant's AWW is \$908.46 is supported by sufficient evidence and is affirmed.

## **CARRIER LIABILITY PURSUANT TO RULE 124.3**

Rule 124.3(a)(1) provides in pertinent part that if the carrier does not file a Notice of Denial by the 15th day after receipt of the written notice of the injury, the carrier is liable for any benefits that accrue and shall initiate benefits in accordance with this section. Rule 124.3(a)(2) provides that if the carrier files a Notice of Denial of Compensability/Liability and Refusal to Pay Benefits (PLN-1) after the 15th day but on or before the 60th day after receipt of written notice of the injury: (A) the carrier is liable for and shall pay all income benefits that had accrued and were payable prior to the date the carrier filed the Notice of Denial and only then is it permitted to suspend payment of benefits; and (B) the carrier is liable for and shall pay for all medical services, in accordance with the 1989 Act and Texas Department of Insurance, Division of Workers' Compensation (Division) Rules, provided prior to the filing of the Notice of Denial. Rule 124.3(a)(3) provides that the carrier shall not file notice with the Division that benefits will be paid as and when they accrue with the Division. Rule 124.3(a)(4) provides in pertinent part that a carrier's failure to file a Notice of Denial by the 15th day after it receives written notice of an injury constitutes the carrier's acceptance of the claim as a compensable injury, subject to the carrier's ability to contest compensability on or before the 60th day after receipt of written notice of the injury, and that a carrier's failure to do so results in the carrier being liable for all accrued income and medical benefits. Finally, Rule 124.3(a)(5) provides in pertinent part that a carrier commits an administrative violation if, not later than the 15th day after it receives written notice of the injury, it does not begin to pay benefits as required or file a Notice of Denial of the compensability of a claim.

The ALJ noted in his discussion that the carrier received written notice of the claimed injury on August 17, 2021, and that the carrier filed a Notice of Disputed Issue(s) and Refusal to Pay Benefits (PLN-11) with the Division on December 27, 2021. The ALJ found the carrier's PLN-11 disputing disability on December 27, 2021, was not timely under Rule 124.3, and therefore determined the carrier is liable for payment of accrued benefits through December 27, 2021, pursuant to Rule 124.3 resulting from its

failure to dispute or initiate the payment of benefits within 15 days of the date it received written notice of the injury.

The carrier contends on appeal that it has never disputed the compensability of the claimant's (date of injury), injury, and had in fact accepted compensability of that injury. In evidence is the PLN-11 dated December 21, 2021, with a Division date stamp reflecting receipt on December 27, 2021, in which the carrier stated it did not agree the "[claimant's] work-related injury [of (date of injury),] stops [him] from getting or keeping a job that pays what [he] earned before [his] injury (existence, duration, or extent of disability)." The carrier did not state in the PLN-11 that it was disputing compensability or liability of the (date of injury), injury, and the evidence does not contain a PLN-1 from the carrier denying compensability or liability of the (date of injury), injury. In Appeals Panel Decision (APD) 072002-s, decided December 20, 2007, the Appeals Panel noted that the "preamble to Rule 124.3 states a dispute of benefit entitlement, i.e.,[.] disability and entitlement to [temporary income benefits], is not a dispute of compensability/liability. . . ." The carrier's PLN-11 filed on December 27, 2021, was a dispute of benefit entitlement, not a dispute of compensability or liability of the (date of injury), injury. The evidence did not establish that the carrier has filed a dispute of compensability or liability of that injury, and as noted above, the parties stipulated at the CCH that the claimant sustained a compensable injury on (date of injury). We reverse the ALJ's determination that the carrier is liable for payment of accrued benefits pursuant to Rule 124.3, resulting from its failure to dispute or initiate the payment of benefits within 15 days of the date it received written notice of the injury. We render a new decision that the carrier is liable for the payment of accrued benefits in accordance with this decision. See APD 210517, decided June 3, 2021; and APD 101679, decided December 30, 2010.

### **SUMMARY**

We affirm the ALJ's determination that the claimant had disability from August 14, 2021, through April 4, 2022, resulting from the compensable injury of (date of injury).

We affirm the ALJ's determination that the claimant's AWW is \$908.46.

We reform Finding of Fact No. 1.D. to state the claimant sustained a compensable injury on (date of injury), that extends to at least a disc herniation at L4-5 to correctly reflect the stipulation made by the parties at the CCH.

We reverse the ALJ's determination that the carrier is liable for payment of accrued benefits pursuant to Rule 124.3, resulting from its failure to dispute or initiate the payment of benefits within 15 days of the date it received written notice of the injury.

We render a new decision that the carrier is liable for the payment of accrued benefits in accordance with this decision.

The true corporate name of the insurance carrier is **TRI-STATE INSURANCE COMPANY OF MINNESOTA** and the name and address of its registered agent for service of process is

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

---

Carisa Space-Beam  
Appeals Judge

CONCUR:

---

Cristina Beceiro  
Appeals Judge

---

Margaret L. Turner  
Appeals Judge