

APPEAL NO. 230400  
FILED MAY 3, 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 February 2, 2023, with the record closing on February 6, 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 (claimant) did not sustain a compensable injury on (date of injury); (2) because the claimed injury arose out of an act of a third person who intended to injure the claimant because of personal reasons, and because the act of the third person was not directed at the claimant because she was an employee or because of the employment, the respondent (carrier) is relieved of liability for compensation; and (3) because the claimant did not sustain a compensable injury, she does not have disability from September 10, 2022, through the date of the CCH. The claimant appealed, disputing all of the ALJ's determinations. The carrier responded, urging affirmance of the disputed determinations.

**DECISION**

Affirmed as reformed.

The claimant testified that she was injured on (date of injury), while working as a cashier at a fast-food restaurant and a group of teenage girls came into the restaurant and attacked her.

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 injury on (date of injury), is supported by sufficient evidence and is affirmed.

**DISABILITY**

The ALJ's determination that because the claimant did not sustain a compensable injury, she does not have disability from September 10, 2022, through the date of the CCH is supported by sufficient evidence and is affirmed.

### **PERSONAL ANIMOSITY**

Section 406.032(1)(C) provides that a carrier is not liable for compensation if the injury:

arose out of an act of a third person intended to injure the employee because of a personal reason and not directed at the employee as an employee or because of the employment.

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. One of the issues certified for resolution before the ALJ was the issue of whether the claimed injury arose out of an act of a third person who intended to injure the claimant because of personal reasons, and not directed at the claimant because she was an employee or because of the employment, thereby relieving the carrier of liability for compensation. The ALJ stated in the Discussion portion of her decision that the carrier produced probative evidence that the claimant's injuries were caused due to personal reasons unrelated to her employment. The ALJ's decision that because the claimed injury arose out of an act of a third person who intended to injure the claimant because of personal reasons, and because the act of the third person was not directed at the claimant because she was an employee or because of the employment, the carrier is relieved of liability for compensation is supported by sufficient evidence and is affirmed. However, the ALJ failed to make a conclusion of law regarding the personal animosity issue. Accordingly, we reform the decision to include a conclusion of law that because the claimed injury arose out of an act of a third person who intended to injure the claimant because of personal reasons, and because the act of the third person was not directed at the claimant because she was an employee or because of the employment, the carrier is relieved of liability for compensation.

### **SUMMARY**

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

We affirm the ALJ's determination that because the claimant did not sustain a compensable injury, she does not have disability from September 10, 2022, through the date of the CCH.

We affirm as reformed the ALJ's determination that because the claimed injury arose out of an act of a third person who intended to injure the claimant because of personal reasons, and because the act of the third person was not directed at the claimant because she was an employee or because of the employment, the carrier is relieved of liability for compensation.

The true corporate name of the insurance carrier is **HARTFORD INSURANCE COMPANY OF THE MIDWEST** 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.**

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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