

APPEAL NO. 231224  
FILED OCTOBER 19, 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 July 17, 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 in the form of an occupational disease with a date of injury (DOI) of (date of injury); (2) the respondent (carrier) is relieved from liability under Section 409.002 because of the claimant's failure to timely notify his employer pursuant to Section 409.001; and (3) the carrier is relieved of 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. The claimant appealed, disputing the ALJ's determinations. The carrier responded, urging affirmance of the ALJ's determinations.

DECISION

Affirmed in part and reversed and remanded in part.

The claimant contended he contracted coronavirus 2019 (COVID-19) while working for the employer. The claimant testified he first experienced symptoms on April 10, 2021, while mowing grass at his house. The claimant initially thought he hurt his back while mowing, but his symptoms, which included pain in his back and chest as well as dizzy spells, progressed so he went to the hospital and was diagnosed with COVID-19. The claimant testified he believed he caught COVID-19 at work, and that seven to nine other employees were also diagnosed with COVID-19 at that time.

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).

**COMPENSABLE INJURY**

The ALJ's determination that the claimant did not sustain a compensable injury in the form of an occupational disease with a DOI of (date of injury), is based upon the

ALJ's findings that the claimant's employment did not place him at greater risk of developing COVID-19 than employment generally, and that his injurious condition did not arise as a result of his employment. These findings are supported by sufficient evidence. Therefore, we affirm the ALJ's determination that the claimant did not sustain a compensable injury in the form of an occupational disease with a DOI of (date of injury).

### **TIMELY NOTICE TO EMPLOYER**

The ALJ's determination that the carrier is relieved from liability under Section 409.002 because of the claimant's failure to timely notify his employer pursuant to Section 409.001 is supported by sufficient evidence and is affirmed.

### **TIMELY FILING OF CLAIM WITH THE DIVISION**

Section 409.003 requires, in pertinent part, an employee or a person acting on the employee's behalf to file a claim for compensation with the Division for an occupational disease not later than one year after the date the employee knew or should have known that the disease was related to the employee's employment. Section 409.004 provides, in part, that an employee's failure to file a claim for compensation as required under Section 409.003 relieves the carrier of liability unless good cause exists for failure to file a claim in a timely manner.

The ALJ found in Finding of Fact No. 7 that the claimant did not file a claim for compensation with the Division within one year of the injury as required by Section 409.003. The Appeals Panel has required an ALJ to take official notice of essential Division forms where timely filing requirements are an issue. See Appeals Panel Decision (APD) 030295, decided March 27, 2003. To determine whether the claimant filed a claim for compensation within one year of (date of injury), the DOI in this case, it is essential to know the date on which the claimant filed a claim with the Division. There is nothing in evidence that establishes when, or even if, the claimant filed a claim with the Division. Accordingly, we reverse the ALJ's determination that the carrier is relieved of 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 remand this case for the ALJ to take official notice of whether the claimant filed a claim for compensation with the Division, and if so, the date the claimant filed his claim.

### **SUMMARY**

We affirm the ALJ's determination that the claimant did not sustain a compensable injury in the form of an occupational disease with a DOI of (date of injury).

We affirm the ALJ's determination that the carrier is relieved from liability under Section 409.002 because of the claimant's failure to timely notify his employer pursuant to Section 409.001.

We reverse the ALJ's determination that the carrier is relieved of 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, and we remand this case for further action consistent with this decision.

### **REMAND INSTRUCTIONS**

On remand, the ALJ is to take official notice of whether the claimant filed a claim for compensation with the Division, and if so, the date the claimant filed his claim, and allow the parties an opportunity to review and respond. The ALJ is to make findings of fact, conclusions of law, and a decision on whether the carrier is relieved of 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.

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 **SERVICE LLOYDS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**J. KELLY GRAY  
6907 NORTH CAPITAL OF TEXAS HIGHWAY  
AUSTIN, TEXAS 78731-1755.**

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Carisa Space-Beam  
Appeals Judge

CONCUR:

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Cristina Beceiro  
Appeals Judge

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Margaret L. Turner  
Appeals Judge