

APPEAL NO. 231689
FILED JANUARY 19, 2024

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 September 5, 2023, with the record closing on October 4, 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) respondent 3 (claimant beneficiary 3) is not a proper legal beneficiary of the decedent, and she is not entitled to death benefits; (2) respondents 1 and 2 (claimant beneficiaries 1 and 2) were dependents of the decedent at the time of death, entitling them to death benefits; (3) the appellant (carrier) is not relieved from liability for death benefits to claimant beneficiaries 1 and 2 under Section 409.007(b) because of their failure to file a claim for death benefits (DWC-42) with the Texas Department of Insurance, Division of Workers' Compensation (Division) pursuant to Section 409.007; and (4) claimant beneficiaries 1, 2, and 3 are not entitled to reimbursement for burial benefits from the carrier.

The carrier appealed, disputing the ALJ's determinations that claimant beneficiaries 1 and 2 were dependents of the decedent at the time of death, entitling them to death benefits, and the carrier is not relieved from liability for death benefits to claimant beneficiaries 1 and 2 under Section 409.007(b) because of their failure to file a DWC-42 with the Division pursuant to Section 409.007. Claimant beneficiaries 1 and 2 responded, urging affirmance of those determinations. The appeal file does not contain a response from claimant beneficiary 3 to the carrier's appeal. The ALJ's determinations that claimant beneficiary 3 is not a proper legal beneficiary of the decedent, and she is not entitled to death benefits and claimant beneficiaries 1, 2, and 3 are not entitled to reimbursement for burial benefits from the carrier were not appealed and have become final pursuant to Section 410.169.

DECISION

Reversed and remanded for reconstruction of the record.

The parties stipulated, in part, that the decedent sustained a compensable injury that resulted in his death on (date of injury). Medical records in evidence indicate the decedent was working on a roof on (date of injury), when he fell 30 feet headfirst and was electrocuted when he hit a live wire.

The ALJ's decision states that claimant beneficiary 1's and 2's exhibits 1 through 19 were admitted. However, during the course of the CCH the attorney for claimant beneficiaries 1 and 2 sought to admit a Notice of Disputed Issue(s) and Refusal to Pay Benefits (PLN-11) dated April 1, 2022, which denied a DWC-42 filed by claimant

beneficiary 3. The decedent's sister testified at the CCH it was after seeing this PLN-11 dated April 1, 2022, that caused her to seek counsel to address filing a DWC-42 on behalf of claimant beneficiaries 1 and 2, who lived in (country) and had received no notice of any DWC-42. The ALJ admitted, without objection from the carrier, a PLN-11 dated April 1, 2022, as claimant beneficiary 1's and 2's exhibit 20. The appeal file forwarded to us for review does not contain claimant beneficiary 1's and 2's exhibit 20. Because the record is incomplete, it must be remanded for the addition or reconstruction of the missing exhibit. See Appeals Panel Decision (APD) 030543, decided April 18, 2003.

Pursuant to Section 410.203(c), the Appeals Panel may not remand a case more than once. Given that we are remanding this case for reconstruction of the record, we have reviewed the audio recording of the September 5, 2023, CCH, the documentary evidence, the ALJ's decision, the appeal, and the response with regard to the issues in dispute.

The version of Section 409.007 effective at the time the claim for death benefits was filed in this case provides, in pertinent part, that:

- (a) A person must file a claim for death benefits with the [D]ivision not later than the first anniversary of the date of the employee's death.
- (b) Failure to file in the time required by Subsection (a) bars the claim unless:
 - (1) the person is a minor or incompetent; or
 - (2) good cause exists for the failure to file a claim under this section.¹

The ALJ found in Finding of Fact No. 11 that claimant beneficiaries 1 and 2 submitted a DWC-42 on November 22, 2022, which is supported by the evidence. We note the ALJ's discussion mistakenly refers to this date as November 22, 2023. The ALJ further found in Finding of Fact No. 12 that claimant beneficiaries 1 and 2 did have good cause for failing to file the DWC-42 within one year of the decedent's death. In the discussion portion of the decision the ALJ noted the carrier provided a plain language notice dated November 3, 2021, to the decedent's family at the decedent's address in (city), Texas, and that the decedent's sister lived at that address. In evidence is a Notice of Potential Entitlement to Workers' Compensation Death Benefits dated November 3, 2021, that was sent to the decedent's address in (city), Texas. It is undisputed that claimant beneficiaries 1 and 2 have not lived in (city), Texas, but have and currently live in (country).

¹ Section 409.007 was amended during the 88th Regular Session of the Texas Legislature under House Bill 2314 and applies to claims for death benefits filed on or after the effective date of June 10, 2023.

The ALJ stated in the discussion section that “[t]he date that [the decedent’s sister] informed her parents of the notice of benefits was not clear,” and that “[t]he persuasive evidence supports a finding that good cause exists for the failure of [claimant beneficiaries 1 and 2] to file a [DWC-42] with the Division pursuant to Section 409.007.” The carrier contends on appeal that if the ALJ found the evidence unclear on what date claimant beneficiaries 1 and 2 were informed of the notice of benefits she could not have determined claimant beneficiaries 1 and 2 had good cause for failing to timely file a claim for death benefits. To determine whether claimant beneficiaries 1 and 2 have good cause for not filing a claim for death benefits within one year of (date of injury), the date of the decedent’s death, it is essential to know the date on which claimant beneficiaries 1 and 2 were notified of the notice of death benefits. On remand the ALJ is to make a finding of fact on the date claimant beneficiaries 1 and 2 were informed of the notice for death benefits.

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 **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**JEANETTE WARD, PRESIDENT & CEO
2200 ALDRICH STREET
AUSTIN, TEXAS 78723.**

Carisa Space-Beam
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Margaret L. Turner
Appeals Judge