

APPEAL NO. 240099
FILED MARCH 7, 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 November 29, 2023, with the record closing on December 13, 2023, in (city), Texas, with (administrative law judge) presiding as the administrative law judge (ALJ). The ALJ resolved the disputed issue by deciding that the appellant's (claimant) average weekly wage (AWW) is \$1,400.94. The claimant appealed, contending that the ALJ erred in dismissing an issue he properly requested to be added. The respondent (self-insured) responded, contending the ALJ did not err in dismissing the requested issue. The ALJ's determination that the claimant's AWW is \$1,400.94 was not appealed and has become final pursuant to Section 410.169.

DECISION

Reversed and remanded.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury), and on that same date the claimant was an employee of the (employer), which provided workers' compensation as a self-insurer.

28 Tex. Admin. Code § 142.7(c) (Rule 142.7(c)) provides, in pertinent part, that a party may submit a response to the disputes identified as unresolved in the benefit review officer's report, and that the response shall be in writing, describe and explain the party's position on the unresolved dispute, be sent to the Texas Department of Insurance, Division of Workers' Compensation (Division) no later than 20 days after receiving the benefit review officer's report, and be delivered to all other parties as provided by Rule 142.4. Rule 142.7(e) provides, in pertinent part, that an ALJ, on a determination of good cause, will allow a dispute not identified as unresolved in the benefit review officer's report.

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. 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.

The ALJ noted in the statement of the case section of the decision that she initially granted the claimant's request to add the following issue: "[i]s the employer, through the [self-insured] improperly recouping money and/or seeking reimbursement contrary to Rule 129.7?" Although the ALJ noted this issue was agreed to by the

parties, the record reflects the claimant requested the issue prior to the CCH, but the self-insured contended at the CCH that the Division did not have jurisdiction to address the requested issue. The ALJ stated at the CCH she had added the issue. However, the ALJ further noted in the statement of the case section of the decision that, upon considering the evidence and the applicable law, she did not have jurisdiction to rule on the issue and dismissed the issue by order following the CCH. We note the ALJ made no findings of fact, conclusions of law, or a decision that she did not have jurisdiction to rule on the issue.

The evidence reflects the claimant timely responded to the benefit review conference report to add the issue of whether the employer, through the self-insured, is improperly recouping money and/or seeking reimbursement contrary to Rule 129.7, and the ALJ granted the claimant's request to add the issue. Additionally, the issue was actually litigated at the CCH. Parties have the right to a determination of issues properly before the ALJ, and the further right to appeal an adverse decision to the Appeals Panel and the courts. This cannot be done in the absence of a written decision disposing of all the issues to be determined. We hold that the ALJ in this case cannot summarily dismiss an issue that was properly before her to determine without making a finding of fact, conclusion of law, and a decision to dispose of the issue. Accordingly, we reverse and remand the ALJ's decision for further action consistent with this decision.

REMAND INSTRUCTIONS

On remand the ALJ is to make findings of fact, conclusions of law, and a decision as to whether or not she has jurisdiction to decide the issue of whether the employer, through the self-insured, is improperly recouping money and/or seeking reimbursement contrary to Rule 129.7. If the ALJ determines she does have jurisdiction over that issue, the ALJ is to make findings of fact, conclusions of law, and a decision on the issue.

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 Appeals Panel Decision 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

(NAME)
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

Carisa Space-Beam
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Margaret L. Turner
Appeals Judge