

APPEAL NO. 092028  
FILED FEBRUARY 25, 2010

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 commenced on October 5, 2009, and concluded on December 3, 2009. The issues before the hearing officer were:

1. Did the [appellant (claimant)] sustain a compensable injury on \_\_\_\_\_?
2. Does the claimant have disability resulting from the injury sustained on \_\_\_\_\_, from February 9, 2008 through the present?
3. Was [(Employer 1)], [(Employer 2)] and/or [(Employer 3)] the claimant's employer for the purpose of the Texas Workers' Compensation Act at the time of the claimed injury?
4. Is [respondent 3] American Guarantee & Liability [(Carrier C)], [respondent 1] America First Lloyds Insurance Company [(Carrier A)], or [respondent 2] Ace American Insurance Company [(Carrier B)] liable for the claimed injury sustained on \_\_\_\_\_?
5. Has [Carrier A], [Carrier B], and/or [Carrier C] waived the right to contest compensability of the claimed injury by not timely contesting the injury in accordance with Section 409.021?

The hearing officer determined that: (1) Employer 2/Employer 3 is the employer for the purpose of the Texas Workers' Compensation Act at the time of the claimed injury on \_\_\_\_\_; (2) neither Carrier A, Carrier B, nor Carrier C is liable for the claimant's injury sustained on \_\_\_\_\_; (3) the claimant did not sustain a compensable injury on \_\_\_\_\_; (4) the claimant "did not have disability resulting from an injury sustained on \_\_\_\_\_, from April 23, 2008 through July 4, 2009"; and (5) neither Carrier A, Carrier B, nor Carrier C have waived the right to contest compensability of the claimed injury by not timely contesting the injury in accordance with Section 409.021.

The claimant appealed all the issues. Carrier A, Carrier B, and Carrier C responded, urging affirmance.

DECISION

Affirmed in part and reversed and rendered in part.

## **INSURANCE COVERAGE, INJURY AND CARRIER WAIVER ISSUES**

The hearing officer's determinations that: (1) neither Carrier A, Carrier B, nor Carrier C is liable for the claimant's \_\_\_\_\_, injury; (2) the claimant did not sustain a compensable injury on \_\_\_\_\_; and (3) neither Carrier A, Carrier B, nor Carrier C have waived the right to contest compensability of the claimed injury by not timely contesting the injury pursuant to Section 409.021, are supported by sufficient evidence and are affirmed.

## **WHO IS THE EMPLOYER**

The hearing officer determined that Employer 2/Employer 3 (license holders under the Staff Leasing Services Act) "is the employer" at the time of the claimed injury. The hearing officer in the findings of fact considered Employer 2 and Employer 3 as being the same entity. The evidence shows that Employer 2 and Employer 3 are two separate entities/employers. The claimant applied for employment with Employer 3; signed an acknowledgement that he was an employee of Employer 3, that he would be performing his job skills for Employer 1 as directed by his supervisor, an employee of Employer 3, that any injuries would be reported to Employer 3 and that reassignments would be made by Employer 3. The claimant testified that he was paid by Employer 3. We affirm so much of the hearing officer's decision and order that determined that Employer 3 is the employer for purpose of the Texas Workers' Compensation Act at the time of the claimed injury on \_\_\_\_\_. We reverse so much of the findings of fact, conclusions of law and decision that hold Employer 2 was an employer, for purpose of the Texas Workers' Compensation Act at the time of the claimed injury on \_\_\_\_\_, as being so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. We render a new decision that strikes that portion of the hearing officer's decision and order that holds Employer 2 was an employer for the purpose of the Texas Workers' Compensation Act at the time of the claimed injury on \_\_\_\_\_.

## **DISABILITY**

The disability issue before the hearing officer was "[d]oes the claimant have disability resulting from the injury sustained on \_\_\_\_\_, from February 9, 2008, through the present?" The hearing officer, in the Background Information commented that because there is no compensable injury, there can be no disability. See the definition of disability in Section 401.011(16). The hearing officer goes on to state "if this case is found to be compensable . . . [t]he preponderance of the evidence supports that [c]laimant sustained disability from a claimed injury on \_\_\_\_\_, from February 9, 2008 through the date of this hearing."

The hearing officer in Conclusion of Law No. 6 and the Decision concludes that the claimant "did not have disability resulting from an injury sustained on \_\_\_\_\_, from April 23, 2008 through July 4, 2009." As noted above, the period of claimed disability at issue was from February 9, 2008, through December 3, 2009, the date of

the CCH. The period of disability litigated was from February 9, 2008, through the date of the CCH, December 3, 2009.

Accordingly, we reverse the hearing officer's determination in Conclusion of Law No. 6 and the Decision that the claimant did not have disability from April 23, 2008, through July 4, 2009, and render a new decision that the claimant did not have disability resulting from the \_\_\_\_\_, injury from February 9, 2008, through December 3, 2009, in order to conform with the evidence.

The hearing officer in Finding of Fact No. 10 found that beginning on February 9, 2008, and continuing through the date of the hearing, "but not thereafter," the work injury of \_\_\_\_\_, was a cause of the claimant's inability to obtain and retain employment of wages equivalent to his pre-injury wage. The hearing officer exceeded her jurisdiction by determining that the claimant did not have disability after the date of the CCH. We strike that portion of the hearing officer's Finding of Fact No. 10 that the claimant did not have disability after the date of the hearing by striking the words "but not thereafter."

### **SUMMARY**

We affirm the hearing officer's determinations that: (1) neither Carrier A, Carrier B, nor Carrier C is liable for the claimant's \_\_\_\_\_, injury; (2) the claimant did not sustain a compensable injury on \_\_\_\_\_; and (3) neither Carrier A, Carrier B, nor Carrier C have waived the right to contest compensability of the claimed injury pursuant to Section 409.021.

We reverse the hearing officer's determination that "[Employer 2]/[Employer 3] is the employer for the purpose of the Texas Workers' Compensation Act at the time of the claimed injury on \_\_\_\_\_" and render a new decision that Employer 3 is the employer for the purpose of the Texas Workers' Compensation Act at the time of the claimed injury on \_\_\_\_\_, and strike that portion of the hearing officer's decision and order that held Employer 2 was an employer for the purpose of the Texas Workers' Compensation Act at the time of the claimed injury on \_\_\_\_\_.

We reverse the hearing officer's Conclusion of Law No. 6 and the Decision portion of the hearing officer's decision and order that states the claimant did not have disability resulting from an injury sustained on \_\_\_\_\_, "from April 23, 2008 through July 4, 2009" and render a new decision that the claimant did not have disability resulting from an injury sustained on \_\_\_\_\_, from February 9, 2008, through December 3, 2009, in order to conform with the evidence.

We strike that portion of the hearing officer's Finding of Fact No. 10 that the claimant did not have disability after the date of the hearing.

The true corporate name of Carrier A is **AMERICA FIRST LLOYDS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICES COMPANY  
701 BRAZOS STREET, SUITE 1050  
AUSTIN, TEXAS 78701.**

The true corporate name of Carrier B is **ACE AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**ROBIN M. MOUNTAIN  
225 EAST JOHN CARPENTER FREEWAY, SUITE 1300  
IRVING, TEXAS 75062-2281.**

The true corporate name of Carrier C is **AMERICAN GUARANTEE & LIABILITY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
701 BRAZOS STREET, SUITE 1050  
AUSTIN, TEXAS 78701-3232.**

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Veronica L. Ruberto  
Appeals Judge

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Margaret L. Turner  
Appeals Judge