

APPEAL NO. 240484  
FILED JUNE 12, 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 February 1, 2024, 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 respondent/cross-appellant (claimant) sustained a compensable injury on (date of injury); (2) the date of injury is (date of injury); (3) the appellant/cross-respondent (carrier) is not 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<sup>1</sup>; and (4) the claimant had disability resulting from the compensable injury on (alleged date of injury), and from November 7, 2021, through December 12, 2021, but not on November 6, 2021, and not from December 13, 2021, thereafter through the date of the CCH resulting from the compensable injury sustained on (date of injury).

The carrier appealed the ALJ's determinations regarding compensability, date of injury, timely filing of a claim, and that portion of the disability determination in favor of the claimant. There was no response from the claimant to the carrier's appeal in the appeal file. The claimant cross-appealed that portion of the ALJ's disability determination that was against him. The carrier responded to the claimant's cross-appeal, urging affirmance of the appealed determination.

DECISION

Affirmed in part and reversed and remanded in part.

The claimant, a laborer, claimed he was injured on (date of injury), while he was laying cement and a machine rolled forward hitting him and injuring his right leg.

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

---

<sup>1</sup> We note the ALJ incorrectly referenced Sections 409.004 and 409.003 as 28 Texas Administrative Law Section 409.004 and 409.003 throughout the decision.

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).

### **DATE OF INJURY**

The ALJ's determination that the date of injury is (date of injury), is supported by sufficient evidence and is affirmed.

### **TIMELY FILING**

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.

The certified issues before the ALJ in this case included: is the carrier 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? In Finding of Fact No. 4, the ALJ states that the date of injury is (date of injury), and in Finding of Fact No. 5, the ALJ states that the claimant filed an Employee's Claim for Compensation for a Work-Related Injury or Occupational Disease (DWC-41) on February 15, 2023. In Conclusion of Law No. 5 and the Decision section, the ALJ determined that the carrier is not 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. Although the ALJ made a conclusion of law, decision, and addressed the issue in her discussion of the evidence, the ALJ failed to make a finding of fact as to why the claimant had good cause for filing his DWC-41 more than a year after the date of injury.

Because the ALJ's decision contains insufficient findings of fact regarding the timely filing issue, which was an issue properly before the ALJ to resolve, it does not comply with Section 410.168 and Rule 142.16. We therefore reverse the ALJ's determination that the carrier is not 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 as being incomplete, and we remand the timely filing issue to the ALJ for further action consistent with this decision. See Appeals Panel Decision (APD) 132339, decided December 12, 2013; APD 180839, decided June 4, 2018; and APD 231645, decided December 28, 2023.

### **COMPENSABILITY**

Because we have remanded the issue of timely filing to the ALJ, we also reverse the ALJ's determination that the claimant sustained a compensable injury on (date of injury), and remand the issue of compensability to the ALJ for further action consistent with this decision.

### **DISABILITY**

Because we have remanded the issue of timely filing to the ALJ, we also reverse the ALJ's determination that the claimant had disability resulting from the compensable injury on (alleged date of injury), and from November 7, 2021, through December 12, 2021, but not on November 6, 2021, and not from December 13, 2021, thereafter through the date of the CCH resulting from the compensable injury sustained on (date of injury), and remand the issue of disability to the ALJ for further action consistent with this decision.

### **SUMMARY**

We affirm the ALJ's determination that the date of injury is (date of injury).

We reverse the ALJ's determination that the carrier is not 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 as being incomplete, and we remand the timely filing issue to the ALJ for further action consistent with this decision.

We reverse the ALJ's determination that the claimant sustained a compensable injury on (date of injury), and remand the issue of compensability to the ALJ for further action consistent with this decision.

We reverse the ALJ's determination that the claimant had disability resulting from the compensable injury on (alleged date of injury), and from November 7, 2021, through December 12, 2021, but not on November 6, 2021, and not from December 13, 2021, thereafter through the date of the CCH resulting from the compensable injury sustained on (date of injury), and remand the issue of disability to the ALJ for further action consistent with this decision.

### **REMAND INSTRUCTIONS**

On remand, the ALJ is to make findings of fact, a conclusion of law, and a decision regarding the issue of timely filing that is supported by the evidence and consistent with this decision. The ALJ is then to make findings of fact, conclusions of law, and a decision regarding compensability and disability that are supported by the evidence and consistent with this decision.

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.**

---

Cristina Beceiro  
Appeals Judge

CONCUR:

---

Carisa Space-Beam  
Appeals Judge

---

Margaret L. Turner  
Appeals Judge