

APPEAL NO. 240658
FILED JUNE 20, 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 April 3, 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 employee (decedent) did not sustain a compensable injury on (date of injury), resulting in his death; and (2) the appellant (claimant beneficiary) is a proper legal beneficiary of the decedent, but she is not entitled to death benefits. The claimant beneficiary appealed, disputing the ALJ's determination that the decedent did not sustain a compensable injury on (date of injury), resulting in his death, and that portion of the determination that she is not entitled to death benefits. The respondent (carrier) responded, urging affirmance of the ALJ's determinations.

DECISION

Reversed and remanded.

It was undisputed that the decedent, a delivery truck driver for the employer, was found dead in his tractor trailer on (date of injury). The claimant beneficiary testified at the CCH that she and the decedent were married on December 12, 1993, and had two daughters, one who is 24 years old, and the other is 20 years old. The claimant beneficiary testified that she had no children with the decedent under 18 at the time of the decedent's death. The claimant beneficiary also testified that her older daughter was not a student on the date of the decedent's death, but her younger daughter, (KW), is a full-time student at the (College), and is in her sophomore year. The ALJ stated at the CCH that if she determined the decedent's death was the result of a compensable injury, she may need to reopen the record to obtain evidence regarding whether KW is a proper legal beneficiary as a full-time student at the time of the decedent's death.

28 Tex. Admin. Code § 140.1(3) (Rule 140.1(3)) states that a "[p]arty to a proceeding" is defined as "[a] person entitled to take part in a proceeding because of a direct legal interest in the outcome."

Section 408.182(a) provides, in pertinent part, that if there is an eligible child and an eligible spouse, half of the death benefits shall be paid to the eligible spouse and half shall be paid in equal shares to the eligible children. Section 408.182(f) provides, in pertinent part, that an eligible child means a child of a deceased employee if the child is enrolled as a full-time student in an accredited educational institution and is less than 25 years of age.

The evidence in this case reflects that KW is potentially a proper legal beneficiary, and as such the outcome of this proceeding affects her interest, as the ALJ's decision, if affirmed, will result in the denial of any death benefits to proper legal beneficiaries. Therefore, KW is a necessary party to this proceeding and entitled to present evidence on her status as a full-time student on the date of the decedent's death and the issue of whether the decedent sustained a compensable injury on (date of injury), resulting in his death. See Appeals Panel Decision (APD) 130472, decided April 26, 2013. Accordingly, we reverse the ALJ's decision and remand the case to the ALJ. Because of lack of notice to and joinder of all necessary parties, we do not reach the merits of the claimant beneficiary's appeal. We remand this case to the ALJ for further action consistent with this decision.

SUMMARY

We reverse the ALJ's determination that the decedent did not sustain a compensable injury on (date of injury), resulting in his death, and we remand this issue to the ALJ for further action consistent with this decision.

We reverse the ALJ's determination that the claimant beneficiary is a proper legal beneficiary of the decedent, but she is not entitled to death benefits, and we remand this issue to the ALJ for further action consistent with this decision.

REMAND INSTRUCTIONS

On remand the ALJ is to ensure that proper service and notice of hearings is sent to all necessary and proper parties, the claimant beneficiary and KW, to allow for due process and fairness of these proceedings for those persons who have such an interest in the controversy that a final judgment or decree cannot be made without affecting their interests.

All parties are to be allowed an opportunity to present evidence on the disputed issues and to respond to evidence admitted by the ALJ.

On remand the ALJ must consider the evidence and make necessary findings of fact and conclusions of law as required by the 1989 Act and Rules as to whether the decedent sustained a compensable injury on (date of injury), resulting in his death, and whether the claimant beneficiary and KW are proper legal beneficiaries of the decedent, entitling them to 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 Texas Department of Insurance, Division of Workers' Compensation, 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