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Opinion issued August 29, 2023



In The
Court of Appeals
For The
First District of Texas

NO. 01-22-00761-CV

EUGENIA WOODARD, Appellant

V.

**TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS
COMPENSATION; CAPP ELECTRIC COMPANY; AND TEXAS
MUTUAL INSURANCE COMPANY, Appellees**

**On Appeal from the 157th District Court
Harris County, Texas
Trial Court Case No. 2022-15901**

MEMORANDUM OPINION

After allegedly being injured while on the job at appellee CAPP Electric Company, appellant Eugenia Woodard sought recovery of workers' compensation

benefits. An Administrative Law Judge (“ALJ”) held a contested case hearing between Woodard and appellee Texas Mutual Insurance Company (“Texas Mutual”), CAPP Electric’s workers’ compensation insurance carrier, and determined that Woodard was not an employee of CAPP Electric at the time of her injury and therefore did not suffer a compensable injury. Woodard filed a petition for judicial review against appellee the Texas Department of Insurance, Division of Workers’ Compensation (“the Division”), and Texas Mutual later appeared in this lawsuit. Texas Mutual moved for summary judgment on the grounds that Woodard did not timely file her petition for judicial review. The Division filed a plea to the jurisdiction based on sovereign immunity. The trial court granted both motions and dismissed Woodard’s claims against Texas Mutual and the Division.

On appeal, Woodard, acting pro se, argues in two issues that the trial court erred in dismissing her claims because (1) she was an employee of CAPP Electric and therefore suffered a compensable injury and (2) CAPP Electric and Texas Mutual’s negligence caused her injury. We affirm.

Background

Eugenia Woodard is a cleaning professional. In 2018, she started using an app called “Handy,” which helps connect cleaning professionals with customers that are

seeking cleaning services.¹ CAPP Electric also started using Handy in 2018 after it became dissatisfied with its prior cleaning company. In April 2018, Handy matched Woodard with CAPP Electric.

Woodard arrived at CAPP Electric on April 27, 2018. She alleged that after she started to clean that day, Wade Ingram, the president of CAPP Electric, offered her a position as a cleaner directly with the company. She acknowledged that she did not complete any paperwork relevant to accepting an employment offer. Ingram denied that CAPP Electric ever made an employment offer to Woodard.

While Woodard was cleaning the men's restroom at CAPP Electric, an unknown employee allegedly pushed the cleaning cart that Woodard was using to carry cleaning supplies. When the employee pushed the cart, the handle from a mop or broom struck Woodard in the side and pushed her into a cabinet. Woodard allegedly fractured a rib and injured her hip.

At the time of Woodard's injury, Texas Mutual was CAPP Electric's workers' compensation insurance carrier. Woodard filed a workers' compensation claim and sought benefits from Texas Mutual, alleging that CAPP Electric was her employer. Texas Mutual denied Woodard's claim on the basis that CAPP Electric did not

¹ Handy is owned and operated by Handy Technologies, Inc. Handy Technologies is not a party to the underlying proceeding or to this appeal.

employ Woodard on the date of the injury. Woodard then pursued administrative remedies, including a benefit review conference and a contested case hearing.

In August 2021, Woodard and Texas Mutual participated in a contested case hearing before an ALJ. The two issues before the ALJ were (1) whether CAPP Electric was Woodard's employer; and (2) whether Woodard sustained a compensable injury on April 27, 2018. Woodard and Ingram testified at the hearing. The ALJ issued a decision on September 1, 2021. In the decision, the ALJ stated that he found Ingram's testimony concerning Woodard's employment status more persuasive, and the ALJ ruled that CAPP Electric was not Woodard's employer and although she sustained an injury on April 27, 2018, she did not sustain a compensable injury. The ALJ ordered that Texas Mutual was not liable to Woodard for workers' compensation benefits.

An appeals panel of the Division reviewed the ALJ's decision at Woodard's request. On November 1, 2021, the Division notified Woodard and Texas Mutual that the ALJ's decision had become final as of that date. This notice informed Woodard that if she was not satisfied with the decision, she must "file a lawsuit in the appropriate district court not later than the 45th day after the date on which [the Division] mailed the parties the decision of the Appeals Panel pursuant to Labor Code, Section 410.252."

Shortly thereafter,² Woodard filed a “Petition for Personal Injury Damages” and named CAPP Electric and Texas Mutual as defendants. This lawsuit was assigned to the 61st District Court of Harris County. In this suit, Woodard asserted a negligence cause of action against both CAPP Electric and Texas Mutual, and she sought compensatory damages. Woodard did not mention the ALJ’s decision, and she did not raise any challenges to that decision. Texas Mutual moved for summary judgment, arguing that Woodard’s claim was barred by the statute of limitations. The 61st District Court granted Texas Mutual’s summary judgment motion on February 14, 2022.

Woodard filed a “Petition for Motion for Administrative Judicial Review,” the underlying proceeding, on March 16, 2022. This lawsuit was assigned to the 157th District Court of Harris County. Woodard named the Division as the sole defendant in this suit. In the petition, Woodard addressed the contested case hearing and the ALJ’s decision. Woodard raised claims of judicial bias and challenged the ALJ’s decision on grounds of “illegality, procedural unfairness[,] and irrationality.” Woodard requested that the Harris County District Clerk issue citation to the Division.

² Texas Mutual attached a copy of this petition to its motion for summary judgment filed in the underlying proceeding. This copy was not file-stamped by the Harris County District Clerk, but it did include a stamp indicating that it was received by “general counsel” on November 15, 2021.

On April 26, 2022, Woodard filed a “Motion for Re-Hearing” in the underlying proceeding. In addition to naming the Division as a defendant, this filing also named Texas Mutual and CAPP Electric. Woodard requested that the court “grant rehearing” of the ALJ’s decision and grant her “Impairment Income Benefits” under Texas’s workers’ compensation regulations. She argued that the ALJ erred in its decision; CAPP Electric was her employer; Texas Mutual denied her claim in bad faith and in breach of the covenant of good faith and fair dealing; and the “Appeals Panel did not consider the negligent acts of Texas Mutual in this claim.” Woodard did not amend her petition to name Texas Mutual or CAPP Electric as defendants. There is no indication that Texas Mutual and CAPP Electric were ever served with process. The trial court denied Woodard’s motion for rehearing.

Woodard moved for summary judgment. In this motion, she argued that she had been terminated from employment for filing a workers’ compensation claim. She also argued that the ALJ’s decision “was [a] fatally flawed ruling on evidence that stifle[d] one sides rights, abuse of discretion.” Woodard did not attach any evidence to her motion.

Although Texas Mutual had not been named as a defendant in an amended petition and it had not been served with process, it filed an answer in the underlying proceeding. Texas Mutual then responded to Woodard’s summary judgment motion and filed a cross-motion for summary judgment. In this motion, Texas Mutual

argued that Woodard failed to file a timely petition seeking judicial review of the ALJ's decision because she did not file suit within 45 days of the date the Division mailed the decision of the Appeals Panel. The trial court granted summary judgment in Texas Mutual's favor, dismissing Woodard's claims against it with prejudice.

The Division filed a plea to the jurisdiction. The Division argued that the trial court lacked subject-matter jurisdiction over claims against it because, as a governmental unit, it enjoys sovereign immunity, and Woodard had not alleged facts demonstrating a waiver of immunity under either the Texas Tort Claims Act or the Texas Labor Code. The Division also argued that the Labor Code did not allow a claimant to name it as a party in a suit for judicial review of an administrative decision in a workers' compensation case. It argued that Texas Mutual, as CAPP Electric's workers' compensation insurance carrier, was the only party that Woodard could have properly named as a defendant. The trial court did not immediately rule on the Division's plea to the jurisdiction.

In August 2022, Woodard moved to compel mediation. The trial court granted this motion.

The Division then filed an amended plea to the jurisdiction, amended answer, and motion to strike the mediation order. This amended plea asserted the same grounds for dismissal that the Division had raised in its original plea to the jurisdiction. In the amended answer portion of this filing, the Division raised the

same statute of limitations argument that Texas Mutual had made in its summary judgment motion: Woodard did not timely file her petition for judicial review because she did not file within 45 days of the Division mailing the notice of the Appeals Panel's decision. The Division argued that “[b]ecause Woodard's suit for judicial review is no less untimely against [the Division] than it was against [Texas Mutual], this matter should be dismissed against [the Division] as it was against [Texas Mutual].”

The trial court signed an order rescinding the referral to mediation and granting the Division's amended plea to the jurisdiction. The court dismissed Woodard's claims against the Division with prejudice. This appeal followed.

Appellate Jurisdiction

As an initial matter, we address whether the trial court rendered a final judgment in this proceeding such that we have appellate jurisdiction over Woodard's appeal of the trial court's order granting Texas Mutual's summary judgment motion.³ *See State ex rel. Best v. Harper*, 562 S.W.3d 1, 7 (Tex. 2018) (per curiam)

³ Civil Practice & Remedies Code section 51.014(a)(8) allows a party to appeal from an interlocutory order that “grants or denies a plea to the jurisdiction by a governmental unit as that term is defined in Section 101.001.” TEX. CIV. PRAC. & REM. CODE § 51.014(a)(8); *id.* § 101.001(3)(A) (defining “governmental unit” to include “this state and all the several agencies of government that collectively constitute the government of this state, including . . . all departments, bureaus, boards, commissions, offices, agencies, councils, and courts”). Thus, even if the trial court did not render a final judgment in this case, we have interlocutory appellate jurisdiction over the portion of Woodard's appeal challenging the trial court's order granting the Division's amended plea to the jurisdiction.

(“[W]e must consider issues affecting our jurisdiction *sua sponte*.”); *City of Houston v. Rhule*, 417 S.W.3d 440, 442 (Tex. 2013) (stating that all courts have “affirmative obligation” to determine whether court has subject-matter jurisdiction “regardless of whether the parties have questioned it”).

Ordinarily, appellate courts only have jurisdiction over appeals from final judgments and certain interlocutory orders that are made appealable by statute. *Bonsmara Nat. Beef Co., LLC v. Hart of Tex. Cattle Feeders, LLC*, 603 S.W.3d 385, 390 (Tex. 2020). In cases in which a judgment is rendered without a conventional trial on the merits, the judgment is not final unless (1) it actually disposes of every pending claim and party, or (2) it clearly and unequivocally states that it finally disposes of all claims and parties, even if it does not actually do so. *In re Guardianship of Jones*, 629 S.W.3d 921, 924 (Tex. 2021) (per curiam). If the order contains a “clear and unequivocal finality phrase” that disposes of the entire case, the order is final, and the failure to actually dispose of all claims and parties renders the order erroneous but not interlocutory. *Id.* (internal quotations omitted); *see Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 206 (Tex. 2001) (“A statement like, ‘This judgment finally disposes of all parties and all claims and is appealable’, would leave no doubt about the court’s intention.”).

The Texas Supreme Court has addressed the finality of a judgment that disposes of fewer than all defendants when not all defendants have been served. *See*

Youngstown Sheet & Tube Co. v. Penn, 363 S.W.2d 230, 232 (Tex. 1962). In *Penn*, the plaintiff sued seven defendants. *Id.* Following a summary judgment proceeding, the trial court entered a judgment disposing of the claims against six defendants. *Id.* The record demonstrated that the remaining defendant had never been served with citation and did not file an answer. *Id.* The Texas Supreme Court noted that nothing in the record indicated that the plaintiff “ever expected to obtain service upon” the remaining defendant. *Id.* The court held that “[i]n these circumstances the case stands as if there had been a discontinuance as to [the remaining defendant], and the judgment is to be regarded as final for the purposes of appeal.”⁴ *Id.* The Fourteenth Court of Appeals has summarized *Penn* as a three-factor test providing that a judgment is final for the purposes of appeal when: (1) the judgment expressly disposes of some, but not all, defendants; (2) the only remaining defendants have not been served or answered; and (3) nothing in the record indicates the plaintiff ever expected to obtain service on the unserved defendants. *Fair Oaks Hous. Partners, LP v. Hernandez*, 616 S.W.3d 602, 605 (Tex. App.—Houston [14th Dist.] 2020, no pet.).

Here, Woodard filed her “Petition for Motion for Administrative Judicial Review” and named the Division as the sole defendant. The appellate record reflects

⁴ The Texas Supreme Court later clarified that this holding in *Penn* was not overruled by *Lehmann*. See *M.O. Dental Lab v. Rape*, 139 S.W.3d 671, 674–75 (Tex. 2004) (per curiam).

that Woodard requested service of citation on the Division. Woodard never filed an amended petition naming additional defendants. However, she did file a “Motion for Re-Hearing” that named the Division, Texas Mutual, and CAPP Electric as respondents. In this motion, Woodard argued that the ALJ’s decision on the compensability of her claim was erroneous. The record does not reflect that Woodard requested service of citation on either Texas Mutual or CAPP Electric. The trial court denied Woodard’s “Motion for Re-Hearing” prior to ruling on Texas Mutual’s and the Division’s dispositive motions.

Texas Mutual argued in its summary judgment motion that it had not been properly served in this proceeding, but it nevertheless appeared by filing an answer. The trial court later granted Texas Mutual’s summary judgment motion. It also granted the Division’s amended plea to the jurisdiction. These two orders disposed of Woodard’s claims against both these parties.

As stated above, Woodard did not name CAPP Electric as a defendant in her “Petition for Motion for Administrative Judicial Review.” To the extent CAPP Electric became a party when Woodard named it as a respondent in her “Motion for Re-Hearing,” the record indicates that the trial court has not disposed of any claims against CAPP Electric, CAPP Electric has not been served, and CAPP Electric has not answered. Additionally, nothing in the record indicates that Woodard expected to obtain service on CAPP Electric. Although Woodard had requested service of

citation on the Division, the record contains no request for service of citation on CAPP Electric. We conclude that this case is governed by *Penn*, and in this circumstance, “the case stands as if there had been a discontinuance as to [CAPP Electric], and the judgment is to be regarded as final for the purposes of appeal.” *See* 363 S.W.2d at 232; *Fair Oaks Hous. Partners*, 616 S.W.3d at 605. We therefore conclude that we have appellate jurisdiction over Woodard’s appeal of the trial court’s order granting summary judgment in favor of Texas Mutual.

Summary Judgment

On appeal, Woodard argues that the trial court erred in rendering judgment against her because (1) she sustained compensable injuries, (2) she was an employee of CAPP Electric at the time of her injury, and (3) CAPP Electric’s negligence caused her injuries. Texas Mutual argues that regardless of the merits of Woodard’s claims, the trial court appropriately granted summary judgment because Woodard did not timely file her suit for judicial review.

A. Standard of Review

We review a trial court’s summary judgment ruling *de novo*. *Odyssey 2020 Acad., Inc. v. Galveston Cent. Appraisal Dist.*, 624 S.W.3d 535, 540 (Tex. 2021). To prevail on a traditional motion for summary judgment, the movant must show that no genuine issue of material fact exists and that it is entitled to judgment as a matter of law. TEX. R. CIV. P. 166a(c); *Tarr v. Timberwood Park Owners Ass’n*, 556

S.W.3d 274, 278 (Tex. 2018). When the parties file cross motions for summary judgment, each party bears the burden of establishing that it is entitled to judgment as a matter of law. *Tarr*, 556 S.W.3d at 278 (quoting *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 356 (Tex. 2000)). In that instance, if the trial court grants one motion and denies the other, the reviewing court should determine all questions presented and render the judgment the trial court should have rendered. *Id.* (quoting *City of Garland*, 22 S.W.3d at 356).

When a plaintiff moves for summary judgment on her own claim, she must conclusively prove all elements of her cause of action. *Fallon v. Univ. of Tex. MD Anderson Cancer Ctr.*, 586 S.W.3d 37, 47 (Tex. App.—Houston [1st Dist.] 2019, no pet.). When a defendant moves for traditional summary judgment, it must either (1) disprove at least one essential element of the plaintiff's cause of action or (2) plead and conclusively establish each essential element of an affirmative defense. *Id.* If the movant satisfies its burden, the burden shifts to the nonmovant to raise a fact issue precluding summary judgment. *Lujan v. Navistar, Inc.*, 555 S.W.3d 79, 84 (Tex. 2018).

A fact issue exists if more than a scintilla of evidence establishes the existence of the challenged element. *Ford Motor Co. v. Ridgway*, 135 S.W.3d 598, 600 (Tex. 2004). More than a scintilla of evidence exists when the evidence rises to a level that would enable reasonable and fair-minded people to differ in their conclusions. *Id.* at

601 (quoting *Merrell Dow Pharms., Inc. v. Havner*, 953 S.W.2d 706, 711 (Tex. 1997)). When reviewing a summary judgment ruling, we take as true all evidence favorable to the nonmovant, and we indulge every reasonable inference and resolve any doubts in the nonmovant's favor. *Hillis v. McCall*, 602 S.W.3d 436, 440 (Tex. 2020) (quoting *Valence Operating Co. v. Dorsett*, 164 S.W.3d 656, 661 (Tex. 2005)).

B. Whether Woodard Timely Filed Her Suit for Judicial Review

A defendant moving for summary judgment on the affirmative defense of the statute of limitations bears the burden to conclusively establish that defense. *Draughon v. Johnson*, 631 S.W.3d 81, 88 (Tex. 2021) (quoting *Exxon Mobil Corp. v. Rincones*, 520 S.W.3d 572, 593 (Tex. 2017)). The defendant must establish the accrual date of the cause of action and that the plaintiff brought suit later than the applicable limitations period, “i.e., that the statute of limitations has run.” *Id.* at 89 (internal quotations omitted); *Diversicare Gen. Partner, Inc. v. Rubio*, 185 S.W.3d 842, 846 (Tex. 2005).

The Texas Legislature first enacted the Texas Workers' Compensation Act (“the Act”) over a century ago to balance the competing interests of providing compensation for injured employees and protecting employers from the costs of litigation. *Tex. Mut. Ins. Co. v. PHI Air Med., LLC*, 610 S.W.3d 839, 843 (Tex. 2020); *SeaBright Ins. Co. v. Lopez*, 465 S.W.3d 637, 642 (Tex. 2015). This is a

“comprehensive” system “with specific benefits and procedures.” *Liberty Mut. Ins. Co. v. Adcock*, 412 S.W.3d 492, 495 (Tex. 2013). Under the Act, workers can recover from subscribing employers without regard to the workers’ own negligence, while the employer’s exposure to uncertain damage awards is limited. *PHI Air Med.*, 610 S.W.3d at 843; *SeaBright Ins.*, 465 S.W.3d at 642 (“The Act ultimately struck a bargain that allows employees to receive a lower, but more certain, recovery than would have been possible under the common law.”) (internal quotations omitted); *Tex. Mut. Ins. Co. v. Ruttiger*, 381 S.W.3d 430, 450 (Tex. 2012) (stating that “cornerstone provision” of Act is that injured employee receives workers’ compensation benefits “in exchange for the common law right to sue his employer for negligence in the event of an on-the-job injury”). The Act provides the “exclusive procedures and remedies” for claims that a workers’ compensation insurance carrier has improperly investigated, handled, or settled a claim for benefits. *In re Accident Fund Gen. Ins. Co.*, 543 S.W.3d 750, 752 (Tex. 2017) (orig. proceeding) (per curiam) (internal quotations omitted).

The Act contemplates that disputes between injured workers and insurance carriers may arise, and it “provides a dispute resolution process consisting of four possible steps.” *Ruttiger*, 381 S.W.3d at 437, 450. These steps are a benefits review conference, a contested case hearing before an administrative law judge, review by

an administrative appeals panel, and judicial review. *Id.* at 437 (citing TEX. LABOR CODE §§ 410.021, 410.151, 410.202, 410.251).

If a party is dissatisfied with the decision of an ALJ following a contested case hearing, the party may appeal that decision by filing a written request for appeal with the appeals panel. TEX. LABOR CODE § 410.202(a). If, as here, the appeals panel affirms the ALJ's decision and does not issue a written decision of its own, the ALJ's decision becomes final and is the final decision of the appeals panel. *Id.* § 410.204(a), (c). The appeals panel's decision regarding benefits is final absent a timely appeal for judicial review. *Id.* § 410.205(a).

If a party has exhausted its administrative remedies and is aggrieved by a final decision of the appeals panel, the party may seek judicial review of the decision. *Id.* § 410.251. The Act provides:

A party may seek judicial review by filing suit not later than the 45th day after the date on which the division mailed the party the decision of the appeals panel. For purposes of this section, the mailing date is considered to be the fifth day after the date the decision of the appeals panel was filed with the division.

Id. § 410.252(a). The “45-day deadline to seek judicial review of an appeals-panel decision is mandatory.” *Tex. Mut. Ins. Co. v. Chicas*, 593 S.W.3d 284, 286 (Tex. 2019).

Here, Woodard and Texas Mutual participated in the dispute resolution process concerning whether her April 2018 injury at CAPP Electric was

compensable and entitled her to workers' compensation benefits. Following a contested case hearing, the ALJ issued a written decision finding that Woodard was not an employee of CAPP Electric and she did not sustain a compensable injury. The ALJ issued this decision on September 1, 2021.

Woodard exercised her statutory right to appeal the ALJ's decision to the Division's appeals panel. In a notice dated November 1, 2021, the appeals panel informed Woodard and Texas Mutual that the ALJ's decision "became final on the date listed at the top of this notice." The notice also stated: "If you are not satisfied with this decision and desire to have the dispute resolved in court, then you must file a lawsuit in the appropriate district court not later than the 45th day after the date on which the Division of Workers' Compensation mailed the parties the decision of the Appeals Panel pursuant to Labor Code, Section 410.252."

Under section 410.252(a), the "mailing date" in this case is November 6, 2021, or "the fifth day after the date the decision of the appeals panel was filed with the division." *See* TEX. LABOR CODE § 410.252(a). Thus, Woodard had until December 21, 2021, or "the 45th day after the date on which the division mailed the party the decision of the appeals panel," to file her suit for judicial review in the district court. *See id.*; *Chicas*, 593 S.W.3d at 286 (stating that 45-day deadline to seek judicial review is mandatory). Woodard, however, did not file the underlying suit until March 16, 2022, nearly three months after the statutory deadline.

We conclude that Woodard did not timely file her suit for judicial review of the appeals panel's decision. *See* TEX. LABOR CODE § 410.252(a); *Chicas*, 593 S.W.3d at 286. We hold that Texas Mutual conclusively established its affirmative defense of limitations, and the trial court therefore correctly granted summary judgment in favor of Texas Mutual. *See* TEX. LABOR CODE § 410.252(a); *Draughon*, 631 S.W.3d at 88–89.

Plea to the Jurisdiction

The Division argues that the trial court did not err by granting its amended plea to the jurisdiction because sovereign immunity bars Woodard's claims against it.⁵

A. *Standard of Review*

Sovereign immunity from suit protects the State of Texas against lawsuits for damages unless the State consents to be sued. *Gulf Coast Ctr. v. Curry*, 658 S.W.3d 281, 283 (Tex. 2022). Immunity from suit presents a jurisdictional question of whether the State has expressly consented to suit. *Id.* at 284. The plaintiff bears the burden to affirmatively demonstrate that the trial court has jurisdiction, which

⁵ Labor Code section 410.252(a) is mandatory, but it is not jurisdictional. *See Tex. Mut. Ins. Co. v. Chicas*, 593 S.W.3d 284, 291 (Tex. 2019). Although the question whether Woodard timely filed her suit for judicial review applies equally to Woodard's claims against both Texas Mutual and the Division, the Division filed only a plea to the jurisdiction, not a motion for summary judgment. We therefore must address whether Woodard established a waiver of the Division's sovereign immunity.

“encompasses the burden of establishing a waiver of sovereign immunity in suits against the government.” *Town of Shady Shores v. Swanson*, 590 S.W.3d 544, 550 (Tex. 2019). “[A] statute shall not be construed as a waiver of sovereign immunity unless the waiver is effected by clear and unambiguous language.” TEX. GOV’T CODE § 311.034.

A party challenging subject-matter jurisdiction may challenge the pleadings, the existence of jurisdictional facts, or both. *Alamo Heights Indep. Sch. Dist. v. Clark*, 544 S.W.3d 755, 770 (Tex. 2018). When the challenge is to the pleadings, we must determine whether the plaintiff has alleged facts affirmatively demonstrating subject-matter jurisdiction. *Id.* We construe the pleadings liberally in favor of the plaintiff and look to the pleader’s intent. *Tex. Dep’t of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004).

If the pleadings do not contain sufficient facts to affirmatively demonstrate jurisdiction but do not affirmatively demonstrate incurable defects in jurisdiction, the issue is one of pleading sufficiency and the plaintiff should be afforded an opportunity to amend. *Id.* at 226–27. If the pleadings affirmatively negate the existence of jurisdiction, the trial court may grant a plea to the jurisdiction without allowing the plaintiff an opportunity to amend. *Id.* at 227. Whether a court has subject-matter jurisdiction and whether a pleader has alleged facts that affirmatively

demonstrate subject-matter jurisdiction are both questions of law that we review de novo. *Id.* at 226.

B. Whether Woodard’s Claims Against the Division Are Barred by Sovereign Immunity

Woodard does not point to a provision of the Labor Code that contains a waiver of the Division’s immunity in suits for judicial review of an appeals panel decision.⁶ See *Childress v. Travelers Indem. Co.*, No. 03-21-00579-CV, 2022 WL 2542005, at *3 (Tex. App.—Austin July 8, 2022, no pet.) (mem. op.) (“In the context of a workers’ compensation benefits dispute, however, the Labor Code does not provide a claimant with the right to sue the Division.”); *Tex. Dep’t of Ins., Div. of Workers’ Comp. v. Brumfield*, No. 04-15-00473-CV, 2016 WL 2936380, at *3 (Tex. App.—San Antonio May 18, 2016, no pet.) (mem. op.) (concluding that in “absence of a clear and unambiguous waiver of the Division’s immunity from [the injured worker’s] claim for judicial review,” claim is barred by sovereign immunity).

⁶ In response to the Division’s appellate brief, Woodard cites Civil Practice and Remedies Code section 101.021, part of the Texas Tort Claims Act, which provides a limited waiver of sovereign immunity for certain tort actions. See TEX. CIV. PRAC. & REM. CODE § 101.021 (waiving immunity for claims of personal injury proximately caused by (1) wrongful act, omission, or negligence of employee of governmental unit acting within scope of employment if injury arises from operation or use of motor-driven vehicle or equipment, or (2) condition or use of tangible personal property or real property). Woodard did not—and cannot—allege in her petition actions by the Division that fall within section 101.021’s waiver of sovereign immunity.

As the Division points out, the parties to the dispute resolution process under the Workers' Compensation Act are generally the injured worker and the employer's insurance carrier. *See* TEX. LABOR CODE § 410.002 ("A proceeding before the division to determine the liability of an insurance carrier for compensation for an injury or death under this subtitle is governed by this chapter."). Although the Division plays a role in this process, this role is administrative and adjudicative. *See, e.g.*, *id.* § 402.001 (designating Texas Department of Insurance as "the state agency designated to oversee the workers' compensation system of this state" and establishing Division "to administer and operate the workers' compensation system of this state"); *Childress*, 2022 WL 2542005, at *3 ("The Division is the agency overseeing the workers' compensation system and adjudicating workers' compensation benefit disputes.").

The Act allows an aggrieved party to challenge the appeals panel's decision regarding benefits by seeking judicial review in the district court. TEX. LABOR CODE §§ 410.251–.252. The Act requires a party seeking judicial review to both "serve any opposing party to the suit" and "provide a copy of the party's petition to the division," the latter of which is a requirement for seeking judicial review. *Id.* § 410.253(a)–(b). The Act also allows the Division to intervene in a suit for judicial review. *Id.* § 410.254. However, the Division is not required to intervene. *See Casaubon Firm v. Tex. Mut. Ins. Co.*, 657 S.W.3d 1, 10 (Tex. App.—El Paso 2021,

pet. denied) (stating that Act “is clearly designed to simply give [the Division] the opportunity to intervene but does not require them to do so” and Act allows for judicial review of Division decisions “without the need to name [the Division] as a party”).

The statutory provision allowing the Division to intervene in a suit for judicial review “does not expressly waive the State’s immunity,” and the Legislature’s “consent to the State being a plaintiff is not consent to the State’s being sued as a defendant.” *Vanderwerff v. Tex. Dep’t of Ins.–Div. of Workers’ Comp.*, No. 05-15-00195-CV, 2015 WL 9590769, at *4 (Tex. App.—Dallas Dec. 30, 2015, pet. denied) (mem. op.); *see Childress*, 2022 WL 2542005, at *3 (concluding that Labor Code did not waive Division’s sovereign immunity in suit for judicial review of appeals panel decision); *Tex. Dep’t of Ins. v. Green*, No. 01-15-00321-CV, 2016 WL 2745063, at *5 (Tex. App.—Houston [1st Dist.] May 10, 2016, pet. denied) (mem. op.) (concluding that Division’s intervention in suit for judicial review did not waive Division’s sovereign immunity for claims asserted against it).

Woodard has identified no portion of the Labor Code or any other statute that clearly and unambiguously waives the Division’s sovereign immunity in a suit for judicial review under Labor Code Chapter 410. We conclude that the Division was not a proper defendant to Woodard’s suit for judicial review, and the Division retained its sovereign immunity from suit. We hold that the trial court properly

granted the Division's amended plea to the jurisdiction without allowing Woodard an opportunity to amend her pleadings.

Because we hold that the trial court properly granted summary judgment in favor of Texas Mutual on limitations grounds and properly granted the Division's amended plea to the jurisdiction on sovereign immunity grounds, we need not address Woodard's arguments concerning the merits of her suit for judicial review.

Conclusion

We affirm the orders of the trial court. All pending motions are denied.

April L. Farris
Justice

Panel consists of Chief Justice Adams and Justices Guerra and Farris.



**COURT OF APPEALS FOR THE
FIRST DISTRICT OF TEXAS AT HOUSTON**

ORDER ON MOTION FOR REHEARING

Appellate case name: *Eugenia Woodard v. Texas Department of Insurance, Division of Workers Compensation; CAPP Electric Company; and Texas Mutual Insurance Company*

Appellate case number: 01-22-00761-CV

Trial court case number: 2022-15901

Trial court: 157th District Court of Harris County

Date motion filed: September 13, 2023

Party filing motion: Appellant

It is ordered that the motion for rehearing is **DENIED** **GRANTED**.

Judge's signature: /s/ April L. Farris
 Acting Individually Acting for the Court

The panel consists of Chief Justice Adams and Justices Guerra and Farris.

Date: October 3, 2023



**COURT OF APPEALS FOR THE
FIRST DISTRICT OF TEXAS AT HOUSTON**

ORDER ON MOTION FOR EN BANC RECONSIDERATION

Appellate case name: *Eugenia Woodard v. Texas Department of Insurance, Division of Workers Compensation; CAPP Electric Company; and Texas Mutual Insurance Company*

Appellate case number: 01-22-00761-CV

Trial court case number: 2022-15901

Trial court: 157th District Court of Harris County

Date motion filed: September 13, 2023

Party filing motion: Appellant

It is ordered that the motion for en banc reconsideration is DENIED GRANTED.

Judge's signature: /s/ April L. Farris

Acting Individually Acting for the Court

The En Banc Court consists of Chief Justice Adams and Justices Kelly, Goodman, Landau, Hightower, Countiss, Rivas-Molloy, Guerra, and Farris.

Date: October 3, 2023

APPENDIX C

Decision of State Supreme Court Denying Review

FILE COPY

RE: Case No. 23-0947

DATE: 1/26/2024

COA #: 01-22-00761-CV

TC#: 2022-15901

STYLE: WOODARD v. TEX. DEP'T OF INS., DIV. OF WORKERS COMP.

Today the Supreme Court of Texas denied the petition for review in the above-referenced case.

EUGENIA WOODARD

* DELIVERED VIA E-MAIL *

**Additional material
from this filing is
available in the
Clerk's Office.**