

APPEAL NO. 92006  
FILED FEBRUARY 19, 1992

On December 5, 1991, a contested case hearing was held at [City], Texas, [hearing officer] presiding as hearing officer. She determined that respondent sustained a compensable injury to her lower back while in the course and scope of her employment and was entitled to benefits under the Texas Workers' Compensation Act. TEX. REV. CIV. STAT. ANN. arts 8308-1.01 et. seq. (Vernon Supp 1992) (1989 Act). Appellant urges that the hearing officer did not address the issue before her, namely, whether temporary income benefits (TIBs) were due the claimant under the circumstances presented in this case.

DECISION

The central issue in this matter not having been resolved by the contested case hearing, the decision of the hearing officer is affirmed in part and reversed in part and the case remanded for further consideration and development of evidence. Article 8308-6.42(b)(3) (1989 Act); Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.2 (TWCC Rules 143.2)

The problem in this case is that all the parties to the contested case hearing failed to focus on the real issue in dispute. Of course, since the respondent was not represented, it is far more understandable why she may have misunderstood the issue in question.

Briefly, the benefit review officer reported the issue left unresolved after the benefit review conference as:

"Whether the claimant is due temporary income benefits."

and commented:

"The claimant's present disability is not as a result of her incident at work on \_\_\_\_\_."

At the beginning of the contested case hearing, the hearing officer expressed some confusion as to what the issue was and asked the parties for their view of the issue. After some discussion, the hearing officer stated the issue to be:

"Whether or not the claimant sustained an injury within the course and scope of her employment"

and obtained the general agreement of both parties.

It appears that appellant did not contest at the benefit review conference that the respondent had sustained an injury in the course and scope of her employment. Rather,

appellant contested that disability, if any, was due to a later injury at home. At the beginning of the contested case hearing, appellant switched gears somewhat and stated that the claim is "controverted in its entirety." In this appeal, the appellant states "[t]he Carrier (appellant here), again, does not dispute that there was an on-the-job injury on \_\_\_\_\_, but rather, that the claimant's (respondent here) disability that she claimed in August was not related to that \_\_\_\_\_ on-the-job injury." Appellant surely did not make this clear at the contested case hearing. In any event, the decision does not determine the matter of disability, whether or when it occurred and what, if any, temporary income benefits are due the respondent. The decision does settle any lingering question concerning the respondent having sustained a compensable injury to her lower back (on \_\_\_\_\_) while in the course and scope of her employment with [employer] and being therefore entitled to benefits (whatever they may be under the circumstances<sup>1</sup>) provided under the 1989 Act. We affirm that aspect of the case finding the hearing officer's decision not to be so against the great weight and preponderance of evidence as to be clearly wrong or unjust. Texas Workers' Compensation Commission Appeal No. 91102, decided January 22, 1992.

Briefly, the respondent worked at [employer] on a wire assembly line on \_\_\_\_\_. She testified she twisted in her chair to get some wires and she felt a sharp pain in her back and thought she pulled a muscle. She reported it to the plant nurse and was given some pills and went back to work. There was an impending lay off and she continued to work, with a day or two off for other reasons, until the lay off occurred on March 25, 1991. She did take part of a day off because her back hurt. She did not seek any medical attention nor did she seek workers' compensation until mid-August 1991. She did draw unemployment insurance benefits once she was laid off. Although respondent testified her back was in constant pain, it was only in mid-August when her back started "hurting real bad" again when she rolled over on her couch at home while watching TV that she sought medical attention. She testified she was up all night and then went to an emergency room the next day. The doctor told her she would not be able to work for a month. Her sister-in-law told respondent she would be covered by workers' compensation. She called [employer] and explained the situation and asked if she could go to a doctor and was told she could. She subsequently saw a Doctor J who, upon her insistence, referred her for an MRI. According to the respondent, this MRI showed "something was different about" two discs. No medical reports are in the record. She stated Dr. J referred her to a specialist but that the insurance company wouldn't pay so she had to cancel the appointment. She is not currently under a doctor's care although she is still having problems with her "arm going to sleep, my legs getting sharp pains and hurting

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<sup>1</sup>Article 8308-4.23(a), 1989 Act, provides that "[a]n employee who has disability and who has not attained maximum medical improvement is entitled to temporary income benefits." The definition of disability under the 1989 Act is "the inability to obtain and retain employment at wages equivalent to the preinjury wage because of a compensable injury." Article 8308-1.03(16).

and sharp pains in my back." Respondent said she has had constant pain since she twisted her back on \_\_\_\_\_, and that's how she connects her injury to her work. She states she never had any back trouble before.

Determining that a compensable injury was sustained by the claimant does little, if anything, to resolve this case. That was apparently conceded at the benefit review conference and, is conceded again, on this appeal. The central issue of disability and TIBs remains and it is for this reason the case is remanded. The existence of disability and entitlement to temporary income benefits was the issue unresolved at the benefit review conference and therefore it remains ripe for the contested case hearing procedure. Articles 8308-6.15(d), 8308-6.31 and 8308-6.34(g), 1989 Act.

The decision is affirmed insofar as it concerns the determination that a compensable injury was sustained while in the course and scope of employment, and is reversed and remanded for further consideration and development of evidence regarding the matters of disability and temporary income benefits.

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Stark O. Sanders, Jr.  
Chief, Appeals Judge

CONCUR:

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Joe Sebesta  
Appeals Judge

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Susan M. Kelley  
Appeals Judge