

APPEAL NO. 92258

This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act), TEX. REV. CIV. STAT. ANN. arts. 8308-1.01 through 11.10 (Vernon Supp. 1992). On May 27, 1992, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. She determined that claimant, appellant herein, gave timely notice but did not prove that she injured her leg and back while in the course and scope of her work on (date of injury). Appellant asserts that she has shown by a preponderance of the evidence that she was injured while responding to a fight in the correctional unit where she worked.

DECISION

Determining that there are no findings of fact made by the hearing officer upon which to base her decision that appellant was not injured in the course and scope of her employment, we reverse and remand.

Of the five findings of fact made, one appears to address the issue of whether appellant injured her leg and back on (date of injury), and it reads as follows:

4.Claimant has not proven by a preponderance of the evidence that she injured her leg and back while running to assist her fellow corrections officers in breaking up a fight on (date of injury).

This "finding," as written, is a conclusion of law. Since it is a conclusion of law, it therefore has no finding of fact upon which it may be based. Article 8308-6.34(g) of the 1989 Act requires findings of fact in the hearing officer's decision. The first three findings address employment, insurance coverage, and residence, while the fifth finding of fact dealt with the separate issue of notice. The finding as to notice supported a conclusion of law that proper notice of injury was given so that the issue of whether an injury occurred in the course and scope of employment remained a determinative issue in this case. As was held in Texas Workers' Compensation Commission Appeal No 92230 (Docket No redacted) decided July 17, 1992, we read the statutory requirement for findings of fact to require that at least one finding of fact must address the question of course and scope of employment when it is a determinative issue in a case.

In remanding this case for the requested finding(s) of fact, we do not indicate that the evidence should be further developed. The record in this case contains the three audio tapes used to record the hearing and all exhibits described by the hearing officer. We do not attempt to impose any restriction upon the manner of making the relevant finding(s), the substance of the finding(s), or the extent to which evidence of record, if any, is further developed to reach the finding(s).

Reversed and remanded. Pending resolution of the remand, a final decision has not been made in this case.

Joe Sebesta
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Philip F. O'Neill
Appeals Judge