

APPEAL NO. 94285

Pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), separate contested case hearings were held on the separate claims listed above in (city), Texas, on November 1, 1993, (hearing officer) presiding as hearing officer. In a single decision he resolved the issues in the two claims. In Docket No. (number), he determined that the respondent (claimant) was not injured in the course and scope of her employment with the County of (county) on (date of injury). Since the decision on this issue has not been appealed, it has become final and will not be discussed further in this decision. In Docket No. (number), the hearing officer determined that the claimant was injured in the course and scope of her employment on or about (date of injury), and that she had disability from (date of injury), to the date of the hearing. The appellant (carrier) appeals urging that there is no evidence or insufficient evidence to support several of the hearing officer's findings and conclusions regarding injury in the course and scope and disability and ask that we reverse the decision. Claimant responds that there is sufficient evidence to support the hearing officer's decision and asks that it be affirmed. Claimant also requests an extension of time to obtain counsel and to properly respond and states that she is "without funds to purchase or obtain the record or to obtain counsel." We are without authority to expand the time provided by statute for filing a reply to a request for review. Texas Workers' Compensation Commission Appeal No. 931097, decided January 14, 1994; Texas Workers' Compensation Commission Appeal No. 93967, decided December 12, 1993. The claimant may request a copy of the electronic recording of the hearing from the San Antonio field office of the Texas Workers' Compensation Commission (Commission).

DECISION

Being unable to render an informed decision on the issue of injury in the course and scope of employment under the current state of the evidence, we reverse the decision and remand for further consideration and development of evidence.

The claimant, a former deputy sheriff with County, sustained a serious injury to her back, hip, and leg in a fall on (date of injury), while working at a second job. She underwent surgery on March 8th and was subsequently returned to light duty by her doctor on March 17, 1993, with "limitations of no lifting and no walking without her crutches." On (date of injury), she got a notice that so upset her that, according to her testimony, she fell off of her crutches and was unable to stabilize them. She put her crutches aside and went into the chief's office where she was apparently told to leave. When she came out of the office she saw Deputy (Mr. B), and the next thing she knew her leg buckled and she caught herself on Mr. B. Mr. B, who is also a union representative, suggested she ask to go home, which she did "because it wasn't professional to cry or become upset there at work." Mr. B testified that the claimant did not have any crutches when he saw her in the hallway, that she was just walking and that he caught her and forcibly lifted her up before she hit the floor. She stated that she had pain in her leg and then it was "ballooned out" by the time she got home. She went to her doctor, (Dr. S), the following day and, according to her testimony,

her doctor took x-rays and told her she had a new break under the plate from her prior surgery. She stated that Dr. S. took her off work.

A report dated "[the day after the date of injury]" from Dr. S indicates that the claimant had come to his office that day and given a variation of the events of the day before and complained of pain in her right leg with mild increased swelling. He took x-rays and stated:

X-RAYS:

AP and lateral radiographs of the right hip today demonstrates what appears to be a non-displaced unicortical fracture extending to inferior screw on the plate. There has been no interval change and the other cortex does not appear violated.

DIAGNOSIS:

1. Proximal femur lesion, right; status post curettage, bone graft and internal fixation.
2. Post-op unicortical right femur fracture

RECOMMENDATIONS:

Lengthy discussion was held with the patient regarding further recommendations including continued maintenance of touch down weight bearing right lower extremity with her crutches. She should avoid any and all activities that may jeopardize the current condition of her proximal femur. She understands that if the fracture displaces she may require even more extensive surgery to include reconstructive nailing of the right femur. For the time being she should be off work. She is to return in one week for continued follow-up.

Earlier medical reports, including a post-op diagnosis dated "3/8/93," show "unicameral bone cyst, rt. proximal femur with stress fracture." Another report mentions unicameral bone cyst with pathologic fracture, right proximal femur. A follow-up visit report dated "3/16/93" also mentions "stress fracture" and "right proximal femur with pathologic fracture." In a letter dated June 11, 1993, from Dr. S (in reply to correspondence apparently requesting clarification of the claimant's injury or injuries and which is unfortunately not in the record), he states in part:

[Claimant] was initially seen on February 4, 1993 regarding an injury she sustained on (date of injury). She underwent extensive evaluation and was found to have a large proximal femoral lesion consistent with unicameral bone cyst involving a significant portion of the bony elements. Because of her symptoms it was highly suggestive of a pathologic fracture that was nondisplaced.

She underwent a bone scan which demonstrated increased uptake which is consistent with a fracture. She was previously asymptomatic and because of the fracture and large size of this to prevent displacement, she underwent a complicated biopsy, as well as curettage, bone graft and internal fixation of

the lesion. It was felt that the fracture she sustained was the result of the fall on (date of injury).

With this state of the evidence, we are not able to determine with any reasonable degree of certainty whether there was an injury in the course and scope of employment on (date of injury). Unfortunately, the hearing officer's Decision and Order does not recite any of the evidence at the hearing or set out what evidence he considered in arriving at his determinations. In our view, the medical evidence as to whether there was any injury in the course and scope on (date of injury), is unclear and, in its current state, fails to resolve the key issue in the case. And, given the technical nature and possible scope of the injury involved in this case, expert medical evidence is necessary. See *generally* Schaefer v. Texas Employers Insurance Association 612 S.W.2d 199 (Tex. 1980); Houston General Insurance Co. v. Pegues, 514 S.W.2d 492 (Tex. Civ. App.-Texarkana 1974, writ ref'd n.r.e.). As indicated, there is mention made in the various medical records, both before and after (date of injury), of "pathologic fracture," and "stress fracture" involving the right femur and "unicortical right femur fracture" mentioned in the (date of injury) report. This, together with the June 11, 1993, letter of Dr. S (which, depending on the context of the inquiry prompting the letter, we conclude could reasonably be read two different ways concerning whether there was a distinct compensable injury on (date of injury)), mandates reversal and remand for further development of the evidence and reconsideration on this key matter.

Since the hearing officer's determination of the disability issue hinged on whether there was an injury in the course and scope of employment, we do not take final action on this matter. We do note that there was evidence to indicate possible periods between (date of injury), and the date of the hearing when the claimant earned some wages and may have gone in and out of disability during the period. See Texas Workers' Compensation Commission Appeal No. 91122, decided February 6, 1992. This matter might be more appropriately developed, if necessary to the resolution of the case.

For the reasons set out above, the Decision and Order of the hearing officer are reversed and the case remanded for further consideration and development of evidence. 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 hearing officer, 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 Workers' Compensation Commission's division of hearings, pursuant to Section 410.202. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Gary L. Kilgore
Appeals Judge