

APPEAL NO. 950038
FILED FEBRUARY 16, 1995

On December 5, 1994, a contested case hearing was held. The hearing was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). The issues at the hearing were: (1) whether the appellant (claimant) sustained a compensable injury on or about _____; (2) whether the claimant timely reported her injury to her employer and, if not, does good cause exist for failing to timely report the injury; and (3) whether the claimant has had disability and, if so, for what periods. Due to a conflict between a finding of fact and a conclusion of law, we are unable to discern what determination the hearing officer made in regard to the compensable injury issue. The hearing officer determined the notice and disability issues against the claimant. The claimant has appealed the hearing officer's decision. The carrier requests affirmance.

DECISION

Reversed and remanded.

Findings of Fact Nos. 5 and 13 read as follows:

5. On _____ Claimant's back began to hurt more from moving a heavy bag. She told a supervisor that her back was hurting and she needed to go home, but did not tell him why her back was hurting or about anything involving a lifting incident at work.
13. Claimant did not show by a preponderance of the credible evidence that she suffered a work-related injury on _____ or that she reported a work-related injury to Employer not later than the 30th day after that injury occurred.

Conclusion of Law No. 2. reads as follows:

2. Claimant at least sustained an aggravation of a back injury in a bag-lifting incident on _____ while working for Employer.

The hearing officer's decision reads as follows:

Although Claimant probably sustained an aggravation of a back injury while at work on _____ (which is an injury under the Texas Workers' Compensation Act), she did not report that injury to her Employer and did not have good cause for failing to timely report the injury. Claimant has not had disability since she did not sustain a compensable injury.

From the above-quoted findings, conclusion, and decision, we are unable to determine what determination the hearing officer made in regard to the issue of whether the claimant sustained a compensable injury on _____. Finding of Fact No. 13 squarely conflicts with Conclusion of Law No. 2 and with the hearing officer's decision that the claimant sustained an aggravation of a back injury while working for the employer on _____. We have previously stated that an injury includes an aggravation of a pre-existing condition, whether or not that condition was job related. Texas Workers' Compensation Commission Appeal No. 92216, decided July 10, 1992. We reverse the hearing officer's decision and order and remand the decision and order to the hearing officer for reconsideration and for findings of fact, conclusions of law, and a decision in regard to whether the claimant was injured in the course and scope of her employment with the employer on _____. Further findings of fact and conclusions of law should also be made with respect to the disability issue if the hearing officer determines that the claimant sustained an injury in the course and scope of her employment with the employer on _____.

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 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.

Robert W. Potts
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Joe Sebesta
Appeals Judge