

APPEAL NO. 971411
FILED SEPTEMBER 4, 1997

This appeal is brought pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on June 20, 1997. (The hearing officer) determined that the appellant (claimant) sustained a compensable injury on _____, "when he fell injuring his right knee" and that he had disability as claimed. The claimant appeals this decision and order of the hearing officer to the extent that "it could possibly be implied that Claimant suffered an injury only to his knee and not to his back," contending that an extent of injury question was not before the hearing officer. The respondent (carrier) replies that the decision is correct in all aspects and should be affirmed. The determinations that the compensable injury included the right knee and that the claimant had disability have not been appealed and have become final. Section 410.169.

DECISION

Reversed and remanded.

The appeal in this case is limited to a fairly narrow question. The claimant, an oil field worker, fell while working on a rig. The issue reported from the benefit review conference (BRC) was: "Did the claimant sustain a compensable injury in the course and scope of his employment on or about _____." The claimant's position stated in this report was that he fell on that date and "injured his right knee and his back." The carrier's position, as reported, was that no accident occurred as claimed. In his answer to the carrier's interrogatories, which asked the claimant to describe the nature and extent of the claimed injury and which were introduced into evidence at the CCH, the claimant stated that the claimed injury included the right knee and back. Neither party submitted any comments on the BRC report. The claimant testified that as a result of the fall, he landed on his right knee, twisted his back and felt pain in both places. Some medical evidence refers only to a knee injury; other medical evidence diagnosed a lumbar syndrome.

Whether or not a formal "extent of injury" question was before the hearing officer, our review of the record in this case, as discussed above, discloses that the parties clearly litigated the question of whether an accident occurred in the course and scope of employment on _____, and whether the claimant injured his right knee and his lower back as a result of this accident. The carrier seems to concede as much in its response to this appeal wherein it states that the claimant's testimony "centered on a compensable knee injury." Clearly, the testimony was not limited solely to a knee injury. In the discussion portion of his decision and order, the hearing officer only discussed the evidence regarding a knee injury and made no mention whatsoever of a back injury. He made no explicit finding of fact of any injury, but only of a fall with the claimant "landing on his right knee." The pertinent conclusion of law is that the claimant fell "injuring his right knee." We are unable to conclude or infer from a fair reading of the decision and order that the hearing officer actually considered a back injury and affirmatively determined that no such compensable injury occurred or that he did not intend to resolve a back injury issue, thus,

leaving it to the parties to pursue the matter.

Because we believe an issue of whether the claimant injured his low back as claimed was before the hearing officer and the hearing officer made no findings on this issue, we reverse the decision of the hearing officer and remand this case. On remand, the hearing officer should determine from the evidence already presented at the CCH and in light of the statutory definition of an injury contained in Section 401.011(26), whether the claimant's fall on _____, caused a back injury. The remaining findings of a compensable right knee injury and disability have become final.

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.

Alan C. Ernst
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Elaine M. Chaney
Appeals Judge