

APPEAL NO. 980276  
FILED MARCH 27, 1998

Following a contested case hearing (CCH) held in (City), Texas, on December 10, 1997, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer, resolved the disputed issues by determining that the compensable injury sustained by the appellant (claimant) on \_\_\_\_\_, included a tear of his left rotator cuff and that the first certification of maximum medical improvement (MMI) and assignment of an impairment rating (IR) by Dr. C on January 28, 1997, did not become final under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)) because of a previously undiagnosed condition, namely, the left rotator cuff tear. Claimant has appealed the hearing officer's failure to make findings of fact and conclusions of law on one other disputed issue at the CCH, namely, the period of disability. The file does not contain a response from the respondent (carrier).

DECISION

Reversed and remanded for findings and conclusions on disability.

The hearing officer's findings of fact and conclusions of law concerning the disputed issues of the extent of the \_\_\_\_\_, compensable injury and the finality of the MMI date and IR date determined by Dr. C have not been appealed and thus have become final by operation of law. Section 410.169.

At the outset of the hearing, the hearing officer recited the disputed issues which included the issue of the period of disability and the parties indicated their agreement that the period of disability was one of the disputed issues. Claimant discussed the evidence concerning disability in his opening statement and in his closing and rebuttal arguments. The carrier contended in closing argument that claimant did not establish that he had disability because the condition causing his disability was not part of his compensable injury and because he had reached MMI. The hearing officer's decision states that the period of disability was one of the disputed issues. However, the hearing officer made no findings of fact and conclusions of law on this issue nor is the issue mentioned in the statement of the evidence, the discussion, the decision, or the order. Accordingly, it is necessary to remand the case for such findings of fact and conclusions of law and corresponding decision and order, based on the evidence of record, as the hearing officer deems appropriate to resolve the disputed issue of the period of disability.

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.

---

---

Philip F. O'Neill  
Appeals Judge

CONCUR:

---

Stark O. Sanders, Jr.  
Chief Appeals Judge

---

Joe Sebesta  
Appeals Judge