APPEAL NO. 990230

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 December 17, 1998. He (hearing officer) determined that the date of injury for the claimed injury is (Injury 2), and that the appellant (claimant) timely reported the claimed low back injury to the employer on that date. Those determinations have not been appealed and have become final under the provisions of Section 410.169. The hearing officer also made the following findings of fact and conclusions of law:

FINDINGS OF FACT

4. The evidence is insufficient to establish a causal connection between the employment and the claimed new injury as the medical evidence supports the proposition that Claimant's low back condition is related to a prior (Injury 1) trauma.

5. Due to the claimed injury, Claimant was unable to obtain and retain employment at wages equivalent to his pre-injury wage from March 24, 1998 through November 3, 1998.

CONCLUSIONS OF LAW

5. Claimant did not sustain a compensable occupational disease.

6. Claimant did not have disability because his claim is not compensable.

The claimant appealed, urging that the evidence established that he sustained a new, aggravation low back injury in the form of an occupational disease and that he had disability, and requesting that the Appeals Panel reverse the decision of the hearing officer and render a decision that he sustained a new compensable injury and had disability. The respondent (carrier 1) replied, urging that the evidence is sufficient to support the determinations of the hearing officer and requesting that his decision be affirmed.

DECISION

We reverse and remand.

The claimant testified and had admitted into evidence 18 exhibits. Carrier 1 called three witnesses and had admitted into evidence 47 exhibits. The claimant sustained a compensable low back injury on Injury 1. A Report of Medical Evaluation (TWCC-69) dated May 2, 1996, indicates that the claimant sustained an injury on December 17, 1995. A Texas Workers' Compensation Commission (Commission) Dispute Resolution Information System (DRIS) entry dated June 16, 1997, reveals that a letter dated June 14, 1997, was sent to the claimant explaining that his treating doctor certified that for the Injury 1, injury,

he reached maximum medical improvement on June 27, 1996, with a zero percent impairment rating and that he had 90 days under the provisions of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)) to dispute that certification. A DRIS entry dated April 1, 1998, indicates that apparently the certification had not been disputed by the claimant or (carrier 2). The safety person, who handles workers' compensation claims for the employer at the location where the employee works, testified that (carrier 3) is the carrier that handled the 1996 claim.

The CCH was lengthy, oral closing statements were not presented at the CCH, and the parties submitted written closing statements. Carrier 1 contended that the claimant did not sustain a compensable occupational disease injury, but that he had a mere recurrence of symptoms from the Injury 1 injury that had not resolved. An ombudsman assisted the claimant at the benefit review conference. Notice of the CCH was sent to the claimant, the ombudsman, carrier 1, and the attorney representing carrier 1. The record does not indicate that the notice of the hearing was sent to carrier 2, carrier 3, or any carrier other than carrier 1. In Texas Workers' Compensation Commission Appeal No. 941316, decided November 14, 1994, the hearing officer determined that the claimant's current condition was a continuation of his 1992 injury and not the result of a new distinct injury occurring in April 1994. The carrier that provided coverage for the 1992 injury was not provided notice of the CCH. The Appeals Panel stated that that carrier was entitled to due process, including notice of the CCH, and the opportunity to be heard; that it would not speculate as to what that carrier may have presented; that a party is entitled to notice even if it has nothing to add; and reversed and remanded for that carrier to be given notice of a CCH. The Appeals Panel also stated that it purposefully refrained from commenting in detail on the evidence concerning the claimed April 1994 injury. In the case before us, we likewise do not comment on the evidence beyond that possibly identifying the carrier providing coverage for the Injury 1 injury.

We reverse and remand for the carrier that provided coverage for the Injury 1 injury to be given notice of a CCH and the opportunity to present evidence, including cross-examining witnesses who testified at the CCH held in December 1998, and a closing argument or statement. If another CCH is held, each party shall be afforded due process in rebutting and commenting on evidence that may be presented.

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 Commission's Division of Hearings, pursuant to Section 410.202. *See* Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

Tommy W. Lueders
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Gary L. Kilgore
Appeals Judge