

## APPEAL NO. 990831

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On March 26, 1999, a prehearing was held. She (hearing officer) determined that the issues from the benefit review conference (BRC) were not ripe for adjudication and "remanded back to a [BRC] to certify issues for a hearing." Appellant (claimant) asserts that this procedure is incorrect and that the hearing should proceed, adding that it should consider issues claimant has raised. Respondent (carrier) replied that there is nothing to review since there was no evidence, etc., and the decision is intermediate and return to a BRC is proper, adding that "this matter is set to be heard on . . . May 5, 1999," implying that "to be heard" refers to another contested case hearing (CCH).

### DECISION

We reverse and remand.

There is no authority in the 1989 Act for the hearing officer to "remand" a case to a BRC after issues have been set forth in a benefit review officer's (BRO) report and the case has been convened for a CCH. See Texas Workers' Compensation Commission Appeal No. 94416, decided May 24, 1994, which pointed out that there is no statutory authority for a hearing officer to "remand"; it noted that "once a dispute goes to a [CCH], however, the dispute should be resolved at that stage of dispute resolution." Appeal No. 94416 also referred to Section 410.151(b) which provides that an issue not raised at a BRC may not be considered at a hearing unless (1) the parties consent or (2) the hearing officer finds good cause for adding an issue. *Also see* Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.7. Appeal No. 94416 concluded by asserting that the hearing officer had abused his discretion in "remanding."

As pointed out in Texas Workers' Compensation Commission Appeal No. 94110, decided March 11, 1994, a party to a claim for which a BRC has been held is entitled to a hearing (citing Section 410.151(a)). In addition, that appeal said a hearing officer is to conduct a hearing and issue a decision that includes whether benefits are due (citing Sections 410.152(a) and 410.168(a)). Appeal No. 94110 determined that a hearing officer, who made findings of facts on the issues in dispute and then purported to "cancel" the hearing, had no authority to cancel the hearing. It pointed out that the decision was a "final" one and not an interlocutory order so the Appeals Panel did review the case.

The question under review is not considered to be an interlocutory one, since the hearing officer is, in effect, canceling the scheduled hearing and has determined to take no action on the issues reported from the BRC, without having decided those issues or other issues that she considered based either on (1) consent of the parties or (2) her determination of good cause to add other issues.

This case is remanded to the hearing officer to address the issues provided in the BRO's report. The hearing officer may change the issues with the consent of both parties or the hearing officer may add issue(s) upon first finding good cause. Evidence, in regard to the issues determined by the hearing officer to be under consideration at the hearing on remand, will be considered and a decision thereafter will be provided. Should the hearing on remand not consider an issue or issues either party wishes to have considered, either party may request a BRC and may ask that a certain issue, not previously adjudicated, be considered. If another CCH has already been held on virtually the same issues as were posed for the scheduled hearing under review, the hearing officer on remand may consider the determinations made therein, if applicable, as having resolved part, or all, of the issues to be determined on remand.

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.

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Joe Sebesta  
Appeals Judge

CONCUR:

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Robert W. Potts  
Appeals Judge

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Gary L. Kilgore  
Appeals Judge