

APPEAL NO. 991274

This appeal arises pursuant to the 1989 Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On May 19, 1999, a hearing was held. He (hearing officer) determined that the appellant (claimant) sustained a compensable injury to her knees when she fell at work on _____, but that she did not sustain a compensable injury to her "tail bone" and did not have disability. Claimant asserts that she agrees that she did not injure her "tail bone" but states that she did sustain injury to the lumbar area in the nature of sprains, strains, and muscle spasms. She also disagrees with the wording of certain findings of fact and states that she was unable to work and did have disability. Respondent (carrier) replied that the decision should be affirmed.

DECISION

We reverse and remand.

Claimant worked for (employer) on _____. She had worked for this employer since July 6, 1998. On the date in question, claimant testified, she entered the breakroom and slipped, falling forward to land on her knees and then onto her hands. She had no injury to her hands. The fall was witnessed. The issue as set forth only asked if claimant sustained a compensable injury. The hearing officer found that she sustained a compensable injury to her knees that has "resolved"; neither claimant nor carrier appealed the finding of a compensable injury to the knees or that such injury has resolved.

The parties litigated what injury, if any, claimant sustained under a set of facts that indicated claimant initially sought medical care approximately three months after the _____, incident. On first presenting to Dr. P, claimant complained of "lower back pain for one week close to tail bone." At one time, Dr. P thought an x-ray showed that she had broken her "tail bone" (early November 1998), but another x-ray in late November 1998 showed "no evidence . . . to suggest healing fracture. Most likely this merely represents a normal developmental variation." (The radiologist who interpreted the x-ray was Dr. Mc.) After the latter x-ray, Dr. P referred to claimant's "continued pain" in December 1998 as being in the "coccygeal area." Dr. P wrote at this time of an orthopedic consult for "intractable pain."

Claimant began seeing Dr. M on January 8, 1999. He said that his examination showed a sacroiliac strain/sprain and a sacrococcygeal strain. He also stated that her manner of fall was consistent with the injury. Dr. M does not comment in terms of claimant's "tail bone."

The case is remanded for the hearing officer to determine whether or not claimant sustained an injury on _____, to her low back, including the area of the coccyx, but not limited to the tailbone. In making findings of fact in regard to whether claimant sustained an injury on _____, to the low back, including the area of the coccyx, the hearing officer may or may not convene a hearing on remand. This remand is not made necessary to

develop the evidence, but to make a finding(s) of fact regarding whether there is injury to the low back, not just to the "tail bone." We note that the phrase "normal developmental variation" was used by Dr. Mc; we do not find Dr. P using that phrase. In remanding, we do not imply that injury other than to the knees occurred, nor do we imply that injury other than to the knees did not occur; the hearing officer is the sole judge of the weight and credibility of the evidence; as the fact finder, he must make findings of fact necessary to the issue as litigated at the hearing. Since remand will determine whether or not there is a low back injury, the determination as to disability is also reversed, to be considered by the hearing officer after he further determines the issue of injury.

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.

Joe Sebesta
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Thomas A. Knapp
Appeals Judge