APPEAL NO. 991777

This appeal arises 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 July 26, 1999. The issue at the CCH involved the impairment rating (IR) to be assigned to the appellant, who is the claimant, for his compensable injury of _____, with the contention made that the first IR assigned to the claimant became final because he did not dispute it within 90 days in accordance with 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)).

The hearing officer held that the case of Rodriguez v. Service Lloyds Insurance Company, 42 Tex. Sup. Ct. J. 900 (Tex. 1999), provided that there are no exceptions to Rule 130.5(e) and consequently the matter was limited to determining whether a timely dispute was made. The hearing officer stated in her decision that she made "an extensive review" of the Texas Workers' Compensation Commission's (Commission) Dispute Resolution Information System (DRIS) records and this did not support the claimant's contention that a timely dispute was made.

The claimant has appealed and argues that he could not have been at maximum medical improvement when first assigned because his treating doctor had told him he would require six months to recover. He argues that, as he testified, he contacted a field office of the Commission in South Texas before 90 days were up and asked to dispute the IR. The respondent (carrier) responds that the decision of the hearing officer is supported by the extensive review of the Commission's records, as recited in the hearing officer's decision.

DECISION

Reversed and remanded for completion of the record.

The claimant injured his knee on _____, while employed by (employer). The claimant was apparently injured in (State 2) but nothing relating to the file that is in evidence indicates that it was ever processed as anything but a Texas workers' compensation claim. Indeed, the first IR, completed by Dr. P in January 1998, stating that the claimant had an eight percent IR, was completed on a Report of Medical Evaluation (TWCC-69), a copy of which was sent to the claimant by the Commission on January 27, 1998. A letter from a State 2 lawyer dated in March 1998 firmly informed the claimant that he had to dispute the first IR by April 20, 1998.

The claimant testified that he called the (city) field office of the Commission shortly after he received the notice from the Commission and that he was confused as to what it meant. The claimant named at least one person that he spoke to, and later received a notice that a benefit review conference (BRC) was set. He said that he had indicated that he wished to dispute the IR because his doctor had told him in November 1998 that he had six months to recover and the IR was done before that.

He continued to have problems with his knee and had a surgery on June 4, 1999. The claimant said that he was informed by the Commission that the BRC was canceled because the dispute had been "resolved." He said he was not informed that there was considered to be a dispute over jurisdiction, and he has been puzzled to find this was the case. The claimant said he had initially processed the claim under Texas workers' compensation laws because he was recruited and hired in State 1, although injured in State 2.

Although the hearing officer is right about her interpretation of case law with regard to there being no exceptions to Rule 130.5(e), this was not the claimant's argument. Rather, he asserted that he made a timely dispute. The hearing officer made her decision based upon a recited "extensive review" of DRIS notes. We have stated before that copies of documents that are officially noticed must be made a part of the record, and such was not done here. *See* Texas Workers' Compensation Commission Appeal No. 93103, decided March 22, 1993; Texas Workers' Compensation Commission Appeal No. 93629, decided September 10, 1993. As in Appeal No. 93629, we must therefore decline to perform our own "extensive review" of case files which may or may not include documents used by the hearing officer in making her determination, and therefore remand so that the noticed documents can be properly made part of the record.

As the Appeals Panel can only remand this matter once, we would observe that there is nothing in this record to explain why the Commission, in the face of a clear election of the claimant from inception to process the case under Texas workers' compensation law, would cast any dispute in 1998 as a jurisdictional one between State 2 and State 1. It is suggested that any other documents ancillary to the requesting, setting and canceling of a BRC in 1998 be made a part of this record, if not otherwise reflected in the DRIS notes.

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.

Susan M. Kelley
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Judy L. Stephens
Appeals Judge