

APPEAL NO. 000159

On December 17, 1999, a contested case hearing was held. The hearing was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 et seq. (1989 Act). With respect to the issues at the hearing, the decision and order we have been asked to review recites that the appellant (claimant) did not sustain a compensable injury on _____, and that the claimant has not had disability. In her appeal, the claimant contends that it was error for (hearing officer 2) to have signed the Decision and Order because he was not the hearing officer who heard the case. The claimant's appeal notes that the hearing officer is the sole judge of the weight and credibility of the evidence and asserts that "it is difficult to comprehend that a Hearing Officer or other person who did not hear the evidence, particularly the testimony, could make these determinations." In its response to the claimant's appeal, the respondent (carrier) urges affirmance without commenting on the fact that a hearing officer other than the hearing officer who heard the case signed the decision and order.

DECISION

Reversed and remanded.

The decision and order we have been asked to review is signed by hearing officer 2, without providing any explanation as to why he signed the decision rather than hearing officer 1. The record reflects that hearing officer 1 heard the case. The claimant has clearly raised an issue regarding the signing of the decision by a person other than the hearing officer who heard the case. The same question was before us in Texas Workers' Compensation Commission Appeal No. 94971, decided September 8, 1994. In Appeal No. 94971 we reviewed Section 410.168(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.16(a), and observed that "[i]t would appear that the language of both the statute and the rule, by referring to the hearing officer rather than a hearing officer, contemplates that the hearing officer who heard the case sign the decision." (Emphasis in original.) We distinguished the facts of Appeal No. 94971 from those cases wherein we were able to ascertain that the decision and order had been completed, but not signed, by the hearing officer who heard the case prior to leaving the Texas Workers' Compensation Commission (Commission). In the instant case, as in Appeal No. 94971, there is nothing in the record "to indicate that the decision is that of the hearing officer who heard the case." Following our decision in Appeal No. 94971, we reverse the decision and order in this case and remand the case so that either hearing officer 1 can sign her decision or that we may be provided with proof that this is her decision. As we stated in Appeal No. 94971, "[p]rior to reviewing the merits of the decision and order of the hearing officer, we must determine that this is indeed the decision and order of the hearing officer."

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.

Elaine M. Chaney
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Robert W. Potts
Appeals Judge