

APPEAL NO. 011188
FILED JULY 12, 2001

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 May 7, 2001. With regard to the issues before her, the hearing officer determined that the respondent/cross-appellant (claimant) did not have disability from November 7, 2000, through the date of the CCH, and that the claimant's average weekly wage (AWW) was \$564.51.

The appellant/cross-respondent (carrier) appealed the AWW issue, asserting that the AWW should be either \$308.00 or \$336.00, based on the claimant's hourly wage for a 40-hour work week. The claimant appeals the disability issue, contending that his doctor had him off work, that he "never actually worked" at a cleaning establishment, and that the hearing officer at a prior CCH "was supposed to be there." The carrier responded to the claimant's appeal. There is no response to the carrier's appeal.

DECISION

Remanded.

The hearing officer's decision lists among the claimant's exhibits, Claimant's Exhibit No. 4 "Statements from witnesses." During the course of the CCH, reference was made to "notarized statements" from Ms. C, who worked in a cleaning establishment, and Mr. S, the owner of the cleaning establishment. One of the issues is disability, and whether the claimant was working for the cleaning establishment or was making some deliveries as a friend for Ms. C is relevant to the determination of whether the claimant had an ability to obtain and retain employment.

Claimant's Exhibit No. 4 was not in the packet of the claimant's exhibits fastened by a prong fastener nor was this exhibit elsewhere in the file. Because both parties have referenced these statements, we do not have a complete record to review.

This matter is remanded for the very narrow and specific purpose of obtaining a copy of Claimant's Exhibit No. 4 as admitted at the CCH. No evidentiary rehearing on remand is required and no further comment from the parties will be accepted. In that this is a remand a "new" decision will be required but it is for only the specific purpose of including the missing exhibit. In that a new decision will be issued, the parties will need to resubmit their appeals and the response.

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.

Thomas A. Knapp
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Elaine M. Chaney
Appeals Judge