

APPEAL NO. 011885
FILED SEPTEMBER 6, 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 June 13, 2001. Although the hearing officer issued a decision and order, which is dated July 16, 2001, and which was distributed to the parties, it is clear to us from the abbreviated record that was generated that the hearing was stopped before it was properly completed. The appellant (claimant) protests that testimony was never finished and the hearing officer indicated the case would be remanded back to a benefit review conference (BRC). The respondent (self-insured) agrees with the claimant's position.

DECISION

Reversed and remanded.

After reading the transcript of the proceedings held on June 13, 2001, we agree with the contentions of the claimant that he has not had a complete hearing of his case. The hearing officer started this proceeding by saying that she would determine extent of injury before acting on the self-insured's request for deposition of the designated doctor. She stated that if she found that the injury extended to include the herniated disc and degenerative dehydrated disc, then it would be appropriate to send a letter of clarification to the designated doctor. (Transcript, page 10.) As the claimant began to testify, the hearing officer asked about the records from the first treating doctor (transcript, page 15), and learned that such records were not available, and soon learned that other relevant records were not available (transcript, page 19). At that point, the hearing officer said:

We're not going to continue with this hearing. I'm not going to leave the record open to wait for records so that I can determine extent of injury so that I can leave the record open again so that I can write to the designated doctor, if that's necessary. I'm not going to maintain this file. These claims come ready to CCH. All records should be here for me to make a determination.

(Transcript, page 20.) She then made the following decision:

I'm sending you back to the [BRC]. We'll get a copy of those records that the [Self-insured] has of the early medical treatment. [Ombudsman], you will review those records and assist the Claimant in looking at that medical and presenting whatever the Claimant believes establishes causation and discuss that before the [BRC]. Then the Benefit Review Officer [BRO] will make another recommendation on extent of injury, if there is no resolution.

(Transcript, page 26.)

It was error for the hearing officer to stop the proceeding with the intention of sending it back to a BRC. See Texas Workers' Compensation Commission Appeal No. 990831, decided June 3, 1999, and Texas Workers' Compensation Commission Appeal No. 002281, decided November 8, 2000. In Appeal No. 002281, we said:

In cases where a prerequisite to holding a CCH is a BRC, the Appeals Panel has previously held that a hearing officer has no authority under the 1989 Act to "remand" a case to a BRC after issues have been set forth in a [BRO] report and the case has been convened for a CCH. [Appeal No. 990831, *supra*.] See also Texas Workers' Compensation Commission Appeal No. 94416, decided May 24, 1994, in which the Appeals Panel pointed out that there is no statutory authority for a hearing officer to "remand," noting that once a dispute goes to a CCH, the dispute should be resolved at that stage of dispute resolution.

There were no further proceedings of record. We are at a loss to understand why the hearing officer elected to write a decision and order in this case when the hearing was incomplete. The claimant was testifying at the time the hearing stopped. It was apparent that the hearing officer wanted more records from the initial treating doctor and other doctors. A continuance to obtain the records was the appropriate course of action. If a further continuance became necessary to seek clarification from the designated doctor, then that issue could have been dealt with at a later time. We must remand for the hearing officer to conduct a complete hearing which fairly resolves the issues and affords all parties their due process rights.

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 (amended June 17, 2001). See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

We remind the hearing officer also that she must obtain the true corporate name of the insurance carrier and the name and address of its registered agent for service of process and include that information in the file.

Michael B. McShane
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert W. Potts
Appeals Judge