

APPEAL NO. 012587  
FILED DECEMBER 13, 2001

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). According to the Decision and Order, a contested case hearing (CCH) was held on June 14, 2001, and September 11, 2001, with the record closing on October 1, 2001. The hearing officer determined that the decedent's compensable injury caused his physical condition to steadily deteriorate and was a substantial contributing factor to the heart attack on \_\_\_\_\_. The appellant (carrier) appealed, arguing that the hearing officer erred in determining compensability. The carrier also complains that the hearing officer erred in apparently overruling the carrier's objections and considering depositions which were not timely exchanged, and that no good cause was shown for the failure to timely exchange. The respondent (claimant) did not file a response.

DECISION

Reversed and remanded.

The hearing officer conducted a CCH on June 14, 2001, and adjourned to continue the hearing for 30 days to make a ruling on the carrier's objections as to timeliness of several depositions, Claimant's Exhibit Nos. 1, 3, 4, and 5. After adjournment the carrier asked another question, the claimant answered, and the tape concluded without it being clear that the hearing was adjourned a second time. We note that the second audiotape for June 14, 2001, began in the middle of side one.

The Texas Workers' Compensation Commission (Commission) set the continued hearing for September 11, 2001, at 9:30 A.M. The appearance sheet for September 11, 2001, shows that the claimant and her attorney appeared for the CCH, with no indication that the carrier was present. We note that there is no transcript or audiotape recording of the purported continued CCH on September 11, 2001, and there is no record to indicate that the hearing officer made a ruling on Claimant's Exhibit Nos. 1, 3, 4, and 5. We are unable to discern whether there was in fact a continued hearing conducted on September 11, 2001, and whether the hearing officer made a ruling on the evidence presented by the claimant. There are no closing arguments anywhere on the tapes, causing further concern that we have not been provided a complete record.

Also, we note from the audiotape of June 14, 2001, that Dr. A testified for the claimant and that the Decision and Order does not list Dr. A as a witness for the claimant.

We reverse and remand for reconstruction of the record, for correction of witnesses listed in the Evidence Presented section of the Decision and Order, and for

the hearing officer to make a ruling on the exhibits admitted or excluded from the record.

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, which was amended June 17, 2001, to exclude Saturdays, Sundays, and holidays listed in the Texas Government Code in the computation of the 15-day appeal and response periods.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**RUSSELL R. OLIVER  
PRESIDENT  
TEXAS MUTUAL INSURANCE COMPANY  
221 WEST 6TH STREET  
AUSTIN, TEXAS 78701.**

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Michael B. McShane  
Appeals Judge

CONCUR:

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Philip F. O'Neill  
Appeals Judge

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Robert W. Potts  
Appeals Judge