APPEAL NO. 020674
FILED APRIL 23, 2002

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 issued in this case by hearing officer on March 6, 2002, a contested case hearing (CCH) was scheduled for March 7, 2002, with the record closing on February 25, 2002 to decide the following disputed issue: Did the first certification of maximum medical improvement (MMI) and impairment rating (IR) assigned by Dr. H on April 9, 2001, become final under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e))? The Decision and Order states that at the "unanimous" request of the parties, the following issue was added: "What is the date of [MMI] and the [IR]?" However, no CCH was held in this case on March 7, 2002. Dispute Resolution Information System (DRIS) notes state that the session was canceled and two Benefit Dispute Agreement (TWCC-24) forms signed by the parties were included as Hearing Officer's Exhibit No. 2. The hearing officer determined that the issue of whether the first certification of MMI and IR assigned by Dr. H on April 9, 2001, became final under Rule 130.5(e) was withdrawn by the parties and that the claimant reached MMI on April 6, 2001, with an IR of 23% as certified by Dr. H.

The appellant (self-insured) has appealed, arguing that the hearing officer erred in the determination of MMI and IR and the agreement reached by the parties did not reflect that the fact the issue in question was withdrawn. In his response, the claimant contends that the parties agreed on the date of MMI and IR and that the agreement should be binding on the parties.

DECISION

Reversed and remanded.

The hearing officer states that the "record" was closed on February 25, 2002. The "record" forwarded for review consisted of the benefit review conference (BRC) report (Hearing Officer's Exhibit No. 1) and two TWCC-24 forms, one signed by the claimant and the other signed by the self-insured's representative. Neither form has an "authorized Texas Workers' Compensation Commission Employee's signature." One form was signed by the claimant on February 4, 2002, and the other form was signed by the self-insured's representative on February 19, 2002, and states that the resolution was:

> Parties agree the first certification of [MMI] and [IR] assigned by [Dr. H] on 4/09-01 become final under Rule 130.5(e) Worker reached Maximum Medical Improvement on 04-06-01 with an Impairment Rating of 23%.

Also in the appeal file, although apparently not admitted into evidence, are two DRIS notes. One is dated February 19, 2002, entered by the ombudsman assisting the claimant, and states:

CARRIER HAS NOW SIGNED THE AGREEMENT CC TO HO WITH REQ____ THAT CCH BE CANCELLED._____
PARTIES AGREE TO WITH DRAW FINALITY ISSUES._____

The other DRIS note was an automated entry cancelling the scheduled March 7, 2002, CCH. A note on one of the miscellaneous papers states "Appeals Panel- there will be no tape nor transcript on this per hearing officer." The claimant in his response references "a series of phone communications" with the self-insured's adjuster, however, the content of those conversations are obviously not in evidence. The claimant in his response also seems to indicate that "as part of this agreement [claimant] accepted carrier's request the [claimant] commute Income Impairment Benefits."

Section 410.203 tasks the Appeals Panel to consider "the record developed at the [CCH]"; and the appeal and response. The "record," as recited above, consists of the two aformentioned TWCC-24 forms and the BRC report. We hold that the record submitted is insufficient to allow for any kind of meaningful review.

This case is remanded for the hearing officer to reconvene the CCH, have the parties present (in person or by telephone), establish what the disputed issue is, reconstruct the record and develop additional evidence as it pertains to the disputed issue and the TWCC-24 forms (sworn testimonial evidence and/or documentary evidence) and then enter a decision and order based on the evidence and record developed at the CCH. The hearing officer may wish to refer to Section 410.029 and Rule 147.4 regarding agreements.

The true corporate name of the insurance carrier is **J. C. PENNEY COMPANY, INC. a certified self-insured,** and the name and address of its registered agent for service of process is

C T CORPORATION SYSTEM
300 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.

Thomas A. Knapp
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Terri Kay Oliver
Appeals Judge