

APPEAL NO. 021125
FILED JUNE 24, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on December 10, 2001, and January 23, 2002, with the record held open for an additional medical report until April 4, 2002. The hearing officer resolved the sole issue before him by determining that the _____, compensable right wrist injury of respondent (claimant) extended to her cervical spine. Appellant (carrier) appealed the determination on sufficiency grounds, and also complained that the hearing officer had abused his discretion in his review of the evidence and in his alleged failure to keep the parties apprised of the developments of the evidence from January 23 until April 4, 2002. There is no response from the claimant in the record.

DECISION

We reverse and remand.

Carrier contends that the hearing officer abused his discretion in not allowing the claimant to withdraw her extent-of-injury claim as regarding her cervical spine. However, claimant chose to go forward with the cervical spine issue, as it was certified from the benefit review conference, and to litigate the thoracic outlet syndrome extent issue (as diagnosed by her treating doctor) in a separate proceeding. The hearing officer acted in accord with guiding rules and principles in addressing the issue before him. See Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986).

Carrier contends that the hearing officer abused his discretion with respect to not updating the parties with regard to the development of the medical evidence between January 23 and April 4, 2002. On March 24, 2002, the hearing officer held the record open and forwarded to the parties a medical report from a required medical examination (RME) doctor that the hearing officer had received. In this report, the RME doctor stated that claimant has neck and upper extremity problems and that she has signs of classic thoracic outlet syndrome. The hearing officer issued a decision and order, but did not include the RME report as an exhibit. We must reverse and remand for the hearing officer to admit the RME report and any responses to that report. Because we are reversing regarding the RME report, we must also reverse and remand the extent-of-injury issue for reconsideration by the hearing officer. In remanding this case, we in no way intend to comment on the merits of the case regarding the extent-of-injury issue.

We reverse the hearing officer's decision and order and remand for further proceedings consistent with this decision. 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 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

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

**GEORGE MICHAEL JONES
9330 LBJ FREEWAY, SUITE 1200
DALLAS, TEXAS 75243.**

Judy L. S. Barnes
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Philip F. O'Neill
Appeals Judge