

APPEAL NO. 021250  
FILED JULY 3, 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 (CCH) was held on February 12 and March 12, 2002, with the record closing on April 11, 2002. The hearing officer resolved the disputed issues by deciding that the appellant/cross-respondent (claimant) did not sustain a compensable repetitive trauma injury; that the date of injury under Section 408.007 was \_\_\_\_\_; that the claimant timely reported his injury to his employer; that the claimant timely filed his claim for compensation; that the claimant has not had disability; that the respondent/cross-appellant (carrier) did not waive its right to dispute the claim under Section 409.021; and that the claimant did not make a knowing election of remedies. The claimant appealed the hearing officer's determinations on the issues of compensable injury, disability, and waiver. The carrier appealed the hearing officer's determinations on the issues of the date of injury, timely notice of injury, and timely filing of the claim for compensation. There is no appeal regarding the determination on the issue of election of remedies.

DECISION

The hearing officer's decision is reversed and the case is remanded for the hearing officer to include in the CCH record a March 5, 2002, report from Dr. K if the claimant provided that report to the hearing officer and the carrier before the CCH record was closed.

The record of the March 12, 2002, CCH reflects that the hearing officer left the record open for the claimant to provide to the hearing officer and the carrier Dr. K's response to the addendum report of Dr. W, dated February 11, 2002. The claimant states in his appeal that Dr. K's report of March 5, 2002, was provided to the hearing officer after the CCH of March 12, 2002, while the record remained open for receipt of Dr. K's report. The hearing officer notes in his decision that the record was closed on April 11, 2002. Dr. K's report of March 5, 2002, is not listed as an exhibit nor was it sent to the Appeals Panel as part of the CCH record. As would be expected, neither Claimant's Exhibit No. 7 nor Carrier's Exhibit No. 2, which are reports of Dr. K admitted into evidence at the February 12, 2002, CCH, have Dr. K's March 5, 2002, report included as part of those exhibits. In the hearing officer's decision, Hearing Officer's Exhibit No. 4 is listed as "Response to report from [claimant's attorney];" however, the exhibit that is marked as Hearing Officer's Exhibit No. 4 is the written closing argument of the claimant's attorney, in which is referenced Dr. K's report of March 5, 2002. The written closing argument of the claimant's attorney does not state that Dr. K's report is attached to that document, and it is not attached to that document. The carrier's written closing argument was sent to the Appeals Panel with the CCH record, but that document is not marked or listed as an exhibit.

We are uncertain whether the Appeals Panel has been sent the complete CCH record given the claimant's assertion that Dr. K's March 5, 2002, report was provided to the hearing officer while the record was left open for that purpose, and given the absence of any explanation by the hearing officer as to whether that report was or was not received. It also appears that Hearing Officer's Exhibit No. 4 may have been incorrectly marked because that is the claimant's attorney's written closing argument and not necessarily a "response" as listed in the hearing officer's decision. Section 410.202(a) provides that the Appeals Panel shall consider the record developed at the CCH. Since we are uncertain whether we have the complete CCH record, we must remand for the hearing officer to complete the record or to provide an explanation as to why Dr. K's March 5, 2002, report is not part of the CCH 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 Texas Workers' Compensation Commission's Division of Hearing's pursuant to Section 410.202, as amended effective June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of time in which a request for appeal or a response must be filed.

The true corporate name of the insurance carrier is **ZURICH AMERICAN 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.**

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Robert W. Potts  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Roy L. Warren  
Appeals Judge