

APPEAL NO. 021542
FILED JULY 26, 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 May 15, 2002. The respondent/cross-appellant (claimant) appeals the hearing officer's determination that although the appellant/cross-respondent (self-insured) did not contest compensability on or before the 60th day after being notified of the injury, the self-insured's contest is based on newly discovered evidence that could not have been reasonably discovered at an earlier date. The self-insured also appeals, contending that the hearing officer made no findings of fact or conclusions of law with respect to whether the claimant sustained a compensable injury in the course and scope of her employment.

DECISION

Affirmed in part and reversed and remanded in part.

The hearing officer determined that although the self-insured did not contest compensability on or before the 60th day after being notified of the injury, its contest is based on newly discovered evidence that could not have been reasonably discovered at an earlier date. After review of the record and the complained-of determination, we have concluded that there is sufficient legal and factual support for the hearing officer's decision. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Accordingly we affirm that part of the hearing officer's decision and order.

At the CCH the parties agreed to add the issue "Did the claimant sustain an injury in the course and scope of her employment with [self-insured] on March 6, 2001?" However, the hearing officer made no findings of fact or conclusions of law with respect to that issue even though it was agreed to and litigated during the course of the CCH. Consequently we remand this case back to the hearing officer to make the appropriate findings on that issue.

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 **CITY PUBLIC SERVICE** and the name and address of its registered agent for service of process is

**JUAN YBARRA
145 NAVARRO
SAN ANTONIO, TEXAS 78205.**

Roy L. Warren
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

CONCURRING OPINION:

I concur with the decision of the majority but write separately to emphasize that it was incumbent upon the hearing officer to resolve the issue of compensability once she determined that there was newly discovered evidence that permitted the appellant/cross-respondent (carrier) to reopen the issue of compensability. That is, even if the parties had not agreed to litigate the issue of compensability in this case, the hearing officer still would have had to decide that issue once she decided the issue of reopening in favor of the carrier.

Elaine M. Chaney
Appeals Judge