

APPEAL NO. 021588
FILED AUGUST 8, 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 June 5, 2002. With respect to the issues before her, the hearing officer determined that the respondent (claimant) sustained a compensable injury on _____, and that she had disability from _____, through the date of the hearing. The appellant (self-insured) filed a request for review and an amended request for review, both of which were timely filed. In its initial appeal, the self-insured contends that the hearing officer's injury and disability determinations are against the great weight of the evidence. In its amended appeal, the self-insured attaches new evidence in the form of two checks dated December 5, 2001, and January 3, 2002, respectively, payable to the claimant, which purportedly demonstrate that the claimant was working for another employer on those dates. In an affidavit accompanying those checks, the attorney for the self-insured states that the self-insured was contacted on July 2, 2002, by Ms. W, a business associate of the claimant's in a business called (cleaning service), and advised that the claimant was working on those dates for that employer. In response to the self-insured's appeal, the claimant's husband states that he performed the work for which the claimant was allegedly being paid on those dates.

DECISION

Reversed and remanded.

To determine whether evidence offered for the first time on appeal requires that the case be remanded for further consideration, we consider whether the evidence came to the party's knowledge after the hearing, whether it is cumulative, whether it was through lack of diligence that it was not offered at the hearing, and whether it is so material that it would probably produce a different result. Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993; Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). In this instance, an associate of the claimant's contacted the self-insured and advised them that the claimant was working for the cleaning service cleaning houses in a period after her alleged compensable injury and during which time she was determined by the hearing officer to have disability. We agree with the self-insured's assertion that this evidence would not have been available but for the fact that Ms. W came forward with it and that the self-insured could not control the timing of when Ms. W contacted them with the information. In addition, we believe that if this new evidence were determined by the hearing officer to be credible, it very well could produce a different result on the compensability and/or the disability issue. Accordingly, we reverse the hearing officer's injury and disability determinations and remand for a new hearing. On remand, the hearing officer should consider the newly discovered evidence from the self-insured and the claimant's evidence in response thereto.

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 self-insured is **(SELF-INSURED)** and the name and address of its registered agent for service of process is

**CR
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Elaine M. Chaney
Appeals Judge

CONCUR:

Robert E. Lang
Appeals Panel
Manager/Judge

Philip F. O'Neill
Appeals Judge