

APPEAL NO. 022158
FILED OCTOBER 15, 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 July 29, 2002. The hearing officer determined that he lacked authority to set aside the Texas Workers' Compensation Commission (Commission) determination that the appellant (carrier) became liable for the costs of the respondent's (claimant) spinal surgery by operation of waiver. The carrier contends on appeal that the hearing officer failed to decide the issue presented to him for resolution and that a new decision should be rendered finding that the carrier is not liable for the costs of the claimant's spinal surgery. The appeal file contains no response from the claimant.

DECISION

We reverse and remand.

The hearing officer erred in not resolving whether the carrier waived its right to request a second opinion on the issue of spinal surgery and, consequently, became liable for the costs of the surgery. The hearing officer's decision reflects that the issue presented to him for resolution was worded as follows: "A Contested Case Hearing will be held on the unresolved issue of the need for spinal surgery." After confirming that issue with the claimant, the hearing officer then confirmed with the carrier that it had requested a hearing "for a determination that it had not waived its right for the second opinion." It would seem that the wording of the issue, in part, resulted in the decision that the hearing officer lacked authority to decide the issue. The better practice would have been to phrase the issue in a manner that would lend itself to a resolution; such as the way the hearing officer phrased it for the benefit of the carrier. Therefore, on remand, the hearing officer should phrase the issue in a manner which identifies the specific dispute in question and further develop the record as necessary in order to resolve the disputed issue and make appropriate findings of fact and conclusions of law.

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 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.

The true corporate name of the insurance carrier is **TEXAS PROPERTY & CASUALTY INSURANCE GUARANTY ASSOCIATION** for **Reliance National Indemnity Company, an impaired carrier** and the name and address of its registered agent for service of process is

**MARVIN KELLY, EXECUTIVE DIRECTOR
T.P.C.I.G.A.
9120 BURNET ROAD
AUSTIN, TEXAS 78758.**

Judy L. S. Barnes
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Gary L. Kilgore
Appeals Judge