

APPEAL NO. 030244
FILED MARCH 10, 2003

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 August 1, 2002. In Texas Workers' Compensation Commission Appeal No. 022280, decided October 21, 2002, the Appeals Panel affirmed the hearing officer's determination on an extent of injury issue and remanded the case on the disability issue because we were unable to determine with any degree of certainty when the claimant's disability ended. We directed the hearing officer "to determine the period or periods of disability as defined in Section 401.011(16) that are supported by the evidence."

The hearing officer, in his decision on remand, commented "[n]o further hearing was necessary, and none was held." The hearing officer then further commented:

At page number 91 of the transcript, the [respondent] Carrier contended the [appellant] Claimant had disability from June 6, 1994, through June 20, 1994, and from December 19, 1994, through June 10, 1996. Otherwise, Claimant had such a lack of credibility that no disability would have been found.

The hearing officer then found the same period of disability that he found before in Appeal No. 022280, *supra*, being from June 6, 1994, through June 20, 1994, and from December 19, 1994, through June 10, 1996.

The claimant appealed, emphasizing his testimony and medical reports, and asserts a period of disability "through end of December 1996." The claimant also complains that he was not provided with a copy of the whole transcript including the part referenced by the hearing officer. The file does not contain a response from the carrier to the appeal submitted by the claimant after remand.

DECISION

Affirmed.

The background facts are recited in Appeal No. 022280, *supra*, and will not be repeated here. As previously noted the hearing officer found disability only for the period accepted by the carrier without explanation except to reference the carrier's closing argument which states that it is the carrier's contention that the claimant "sustained disability from 6/6/94 to 6/20/94 and 12/19/94 through 6/10/96, and that he was paid benefits." We would note that a party's closing statement does not constitute evidence.

In that the Appeals Panel is precluded from another remand by Section 410.203(c), and therefore limited to either affirming or reversing and rendering a new

decision, we affirm the hearing officer's decision on the basis that there is some minimal evidence to support the hearing officer's decision. The cavalier attitude of simply adopting the carrier's argument as fact without reference to any evidence does not engender confidence in the fairness of the system.

The claimant also complains that he was only sent the transcript of the "Pre trial Hearing" and did not receive the whole transcript. We would only note that it is the party's responsibility to obtain a record of the proceedings, whether it be audio cassette or transcript. The Texas Workers' Compensation Commission (Commission) is under no obligation to furnish a party a transcript of the proceedings. The party could obtain a copy of the transcript, at their own expense, from the court reporter or could submit blank audio cassette tapes to the Commission for copying at no charge.

As indicated in Appeal No. 022280, supra, matters regarding "Employer, Carrier, and Third Party Administrators violations and illegal activities" are outside our jurisdiction to resolve.

For the reasons stated above the hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Michael B. McShane
Appeals Panel
Manager/Judge