

APPEAL NO. 031261
FILED JULY 9, 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 April 21, 2003. With respect to the issues before him, the hearing officer determined that the respondent's (claimant) claimed injury did not occur while he was in a state of intoxication, as defined in Section 401.013, and that the claimant had disability, as a result of his compensable injury, from June 25, 2002, through the date of the hearing. In its appeal, the appellant (carrier) argues that the hearing officer erred in performing his own legal research on the issue of intoxication and rates of metabolism after the hearing record was closed. In the alternative, the carrier argues that the hearing officer erred in determining that the claimant was not intoxicated at the time of his injury and asks that we render a new determination that the carrier is, therefore, not liable for benefits in this case. In his response to the carrier's appeal, the claimant urges affirmance.

DECISION

Reversed and remanded.

The parties stipulated that the claimant sustained an injury on the job on _____, when he fell 14 feet from a scaffold. In his decision, the hearing officer noted that the parties had agreed that "[t]he Hearing Officer, as needed, would be allowed to perform research on the drugs profiled in the urine and blood analyses with the condition that he reference the resources used for making the decision so each party would be able to confirm the references themselves." Our review of the tape confirms that the parties agreed that the hearing officer should take notice of the Physician's Desk Reference or a similar source for information on the controlled substances mentioned in the evidence, with which he was not familiar. However, as the carrier notes in its appeal, the hearing officer did far more than consult reference books about the controlled substances in this case. Rather, the hearing officer did his own research on the National Highway Traffic Safety Administration's web site and used the information from an article that provided a formula for computing blood alcohol content (BAC) estimates to discredit the evidence from the carrier's toxicologist concerning the calculation of the claimant's BAC level at the time of his injury. In so doing, the hearing officer exceeded the authority to fully develop the facts found in Section 410.163(b) and conducted an investigation and developed evidence, which is the responsibility of the parties. Accordingly, we reverse the hearing officer's decision and remand the case for him to decide the intoxication issue based solely on the evidence presented by the parties.

The carrier did not appeal the factual determination that because of the claimant's injury of _____, he has been unable to obtain and retain employment at his preinjury wages from _____, through the date of the

hearing. Thus, that factual determination has become final. However, the legal conclusion that the claimant had disability is dependent upon the resolution of the intoxication issue and more specifically, on the determination of whether the claimant sustained a compensable injury; thus, we likewise reverse the disability determination.

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 **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**RUSSELL R. OLIVER, PRESIDENT
221 WEST 6TH STREET
AUSTIN, TEXAS 78701.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Veronica Lopez-Ruberto
Appeals Judge