

APPEAL NO. 031779  
FILED AUGUST 18, 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 May 22, 2003. The hearing officer determined that appellant (claimant) did not sustain a compensable injury and that he did not have disability. Claimant appealed these determinations on sufficiency grounds. Respondent (carrier) responded that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We reverse and remand.

Claimant contends that the evidence shows that he sustained a compensable injury and that he had disability. Claimant attached documents to his brief, two of which were not admitted at the hearing and were dated after the hearing. Documents submitted for the first time on appeal are generally not considered unless they constitute admissible, newly discovered evidence. We conclude that this is one of the rare instances when attachments to claimant's appeal meet the requirements of newly discovered evidence necessary to warrant a remand. Having reviewed the documents, we conclude that their admission on remand could result in a different decision. 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). The documents attached are letters from Dr. D and Dr. S, which both state that claimant could have sustained the claimed injury while jerking or twisting. Normally, the Appeals Panel would not remand for consideration of this kind of medical evidence because the claimant could have obtained such evidence before the hearing. However, in this case, the hearing officer indicated her belief that claimant could not have sustained a rib separation injury as claimed. This would normally be the hearing officer's prerogative as fact finder, except for the hearing officer's statement that "it is common knowledge that these injuries are usually caused by some type of blunt force." There was no medical evidence that rib separation injuries are usually caused by blunt force. Claimant had no way of knowing that he would need to rebut what amounts to a personal "medical" opinion of the hearing officer which is based on something outside the record.

We note that the hearing officer did not expressly indicate that she did not find claimant to be credible in general. The hearing officer may have had other reasons than that stated for making her determinations, but they were not clear from the record. It appears that the hearing officer determined claimant did not sustain a compensable injury because she thought the injury could not have happened as alleged. We must remand this case to the hearing officer for reconsideration. In reconsidering the issues, the hearing officer should consider the June 30, 2003, letter from Dr. S and the June 25, 2003, report from Dr. D.

Claimant also complains that he was not allowed to finish his testimony. However, claimant did not raise this at the hearing or ask to testify further. We perceive no error.

We reverse the hearing officer's decision and order and remand this case to the hearing officer for reconsideration of the issues. 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.

According to information provided by carrier, the true corporate name of the insurance carrier is **ASSOCIATION CASUALTY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**HAROLD FISHER, PRESIDENT  
3420 EXECUTIVE CENTER DRIVE, SUITE 200  
AUSTIN, TEXAS 78731.**

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Judy L. S. Barnes  
Appeals Judge

CONCUR:

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Chris Cowan  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge