

APPEAL NO. 033112
FILED JANUARY 21, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on October 6, 2003. The hearing officer resolved the disputed issues by deciding that the compensable injury on _____, does not extend to include bulges at C3-4, C4-5, C6-7; to the thoracic, herniations at L4-5, L5-S1, right wrist and/or right foot spurring; and that the claimant did not have disability as a result of the compensable injury. The appellant (claimant) appealed, arguing that the determinations are against the great weight and preponderance of the evidence. The respondent (carrier) responded, urging affirmance.

DECISION

Reversed and remanded.

Section 410.203(a)(1) requires that the Appeals Panel consider the record developed at the hearing. The Decision and Order states that the CCH was continued to October 22, 2003. The record indicates that both parties had rested at the hearing held on October 6, 2003, and that the continuance to October 22, 2003, was for the presentation of closing arguments. However, it is impossible to ascertain from the record submitted for review whether any further testimony was taken on that date. The claimant's written closing argument, the claimant's request for review, and the carrier's response all refer to testimony given by TJ. Testimony of TJ was not present on the audiotapes submitted for review nor was TJ listed as a witness in the Decision and Order. Accordingly, we must remand for reconstruction of the record.

We further note that the Decision and Order failed to reform the extent-of-injury issue as agreed to by the parties, specifying the exact thoracic and right wrist conditions alleged and further listed incorrect exhibits for both the claimant and the carrier. Additionally, JG was not listed as a witness, although the record reflects that she testified at the CCH for the carrier.

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.

The true corporate name of the insurance carrier is **ACE AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**ROBIN MOUNTAIN
6600 CAMPUS CIRCLE DRIVE EAST, SUITE 200
IRVING, TEXAS 75063.**

Margaret L. Turner
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Chris Cowan
Appeals Judge