

APPEAL NO. 041830
FILED SEPTEMBER 13, 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 was held on June 29, 2004. With respect to the issues before him, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____, and that he did not have disability. In his appeal, the claimant argues that the hearing officer erred in denying his motion to add the issue of whether the respondent (carrier) waived its right to contest compensability pursuant to Section 409.021. In the alternative, the claimant argues that the hearing officer's injury and disability determinations are against the great weight of the evidence. In its response to the claimant's appeal, the carrier urges affirmance.

DECISION

Reversed and remanded.

The injury and disability issues were the disputed issues identified in the May 5, 2004, benefit review conference (BRC) report. On May 12, 2004, the claimant's attorney filed a motion to add the carrier waiver issue. On May 21, 2004, the carrier filed a response objecting to the addition of that issue. At the hearing, the hearing officer denied the motion to add the waiver issue, indicating that he thought it would be best if the issue were developed at a BRC before it went to a hearing. In making his ruling the hearing officer stated "I don't think this [ruling] is prejudicing anybody's rights because the claimant can always litigate it in the future by filing a request for a [BRC]." It is that statement that necessitates a remand in this case. We have long held that a claimant can waive his right to raise a carrier waiver issue if it is not raised before the resolution of the compensability issue. Texas Workers' Compensation Commission Appeal No. 000447, decided April 5, 2000; Texas Workers' Compensation Commission Appeal No. 950464, decided May 10, 1995; and Texas Workers' Compensation Commission Appeal No. 950140, decided March 8, 1995. Thus, the hearing officer erred in stating that his ruling was not "prejudicing anybody's rights" in that the claimant could not raise the carrier waiver issue in a subsequent BRC in this case. We remand the case for the hearing officer to determine if the carrier waiver issue should be added under the correct standard, namely whether there is good cause to add the issue. Tex. W. C. Comm'n, 28 TEX. ADMIN. CODE § 142.7(e) (Rule 142.7(e)).

If the hearing officer decides that good cause exists to add the carrier waiver issue, his resolution of that issue may impact his compensability and disability determinations. Accordingly, we also reverse and remand the injury and disability issues.

The hearing officer's injury and disability determinations are reversed and the case is remanded for the hearing officer to determine if good cause exists to add the

issue of whether the carrier waived its right to contest compensability under Section 409.021. If the hearing officer adds the carrier waiver issue, he must consider and resolve that issue as well as the injury and disability issues on remand.

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 the party receives the new decision 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 **SENTRY INSURANCE, A MUTUAL COMPANY** and the name and address of its registered agent for service of process is

**TREVA DURHAM
1000 HERITAGE CENTER CIRCLE
ROUND ROCK, TEXAS 78664.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Gary L. Kilgore
Appeals Judge