

APPEAL NO. 043107  
FILED FEBRUARY 2, 2005

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 November 2, 2004. The hearing officer resolved the disputed issues by deciding that the respondent's (claimant) compensable injury of (date of injury), does not include a cervical and/or lumbar injury, and that the claimant had disability beginning on (date of injury), and continuing through August 13, 2004, "and at no other times." The hearing officer's determination regarding the extent of injury has not been appealed and has become final. Section 410.169.

The appellant (carrier) appealed the determination concerning disability, contending that the beginning date of disability should be reformed because it does not comport with the issue before the hearing officer or the evidence presented. The appeal file does not contain a response from the claimant.

DECISION

Reversed and remanded.

At issue are the dates of disability. The issue reported out of the benefit review conference (BRC) was whether the claimant had "disability for the period from 10-28-03 through 4-21-04." That is basically the issue listed under the Issues section of the hearing officer's decision, ("from October 28, 2003 to the present") however, the hearing officer announced that the issue was "does claimant have disability as a result of the compensable injury from (alleged date of injury), to the present and continuing." (Both the transcript and CD recording indicate this is what the hearing officer said and the parties agreed to.) The hearing officer found that the claimant had disability beginning on (date of injury), through August 13, 2004, "and at no other times."

The claimant's date of injury was (date of injury). Disability, as defined in Section 401.011(16), between (date of injury) to September 2, 2003, was not really addressed. A Benefit Dispute Agreement (TWCC-24) in evidence reflects that the parties agreed that the claimant did not have disability from September 2 through September 29, 2003, but did have disability from September 30 through October 27, 2003. The parties argued that the disputed disability period was from October 28, 2003, to either April 21, July 14, or August 13, 2004, or "the present." Work Status Reports (TWCC-73) taking the claimant off work begin on October 20, 2003.

Because the periods of disputed disability differed from what was reported out of the BRC, what the parties agreed to at the CCH, what was reflected in the TWCC-24, and what the hearing officer ultimately found, we remand the case for the hearing officer to clarify the disputed period, or periods, of disability. The parties should be given the

opportunity on remand to clarify the disputed and undisputed periods of disability and the hearing officer is to make a determination on disability supported by the evidence.

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 **AMERICAN HOME ASSURANCE COMPANY** 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.**

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Robert W. Potts  
Appeals Judge

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Margaret L. Turner  
Appeals Judge