

APPEAL NO. 050825
FILED MAY 23, 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 February 4, 2005. Prior to writing a decision and order in this case, (hearing officer 1) left employment with the Texas Workers' Compensation Commission (Commission). A letter was sent to the parties explaining that another hearing officer would be assigned to review the record and write a decision and order based upon the evidence presented unless the parties objected on or before March 18, 2005. No objections were received. The hearing officer assigned (hearing officer 2) to write the decision and order in this case. Hearing officer 2 resolved the disputed issue by deciding that the claimant sustained a compensable injury on _____, and had disability beginning on March 2 and ending on September 27, 2004. The appellant (carrier) appealed, disputing the compensable injury and disability determinations. The appeal file does not contain a response from the respondent (claimant).

DECISION

Reversed and remanded.

The claimant testified that he was pumping water for his employer when he fell landing on both knees and then his shoulder. In her Background Information, hearing officer 2 noted that "the claimant would have been standing on a piece of plywood placed on the slab or standing on something similar to prevent electrical shock." In its appeal, the carrier contends that there was no testimony presented that this occurred. After reviewing the record, we note that no such testimony was presented at the CCH.

All of the exhibits offered by both the claimant and the carrier were admitted into evidence without objection from the other party. Hearing officer 2 notes in the Background Information portion of the decision that "the transcribed, recorded statements of the claimant and a co-worker were not considered." The hearing officer justifies not considering this evidence because no evidence was presented regarding the qualifications of the person who transcribed the interviews from Spanish to English. This was error. The hearing officer is the sole judge of the weight and credibility to be given to the evidence. Section 410.165(a). However, the hearing officer is not at liberty to fail to consider evidence, which has been admitted.

We reverse the determinations that the claimant sustained a compensable injury on _____, and had disability beginning March 2 and ending September 27, 2004, and remand back to the hearing officer to make a determination considering all of the evidence which has been admitted into the record.

Additionally, this case is remanded for the purpose of compliance with HB2600 amending Section 410.164, effective June 17, 2001. Section 410.164 was amended by the addition of subsection (c), which provides as follows:

- (c) At each [hearing], as applicable, the insurance carrier shall file with the hearing officer and shall deliver to the claimant a single document stating the true corporate name of the insurance carrier and the name and address of the insurance carrier's registered agent for service of process. The document is part of the record of the [hearing].

In this case, the carrier's information form (Hearing Officer's Exhibit 2) fails to state the true corporate name of the carrier although it did provide the name of a registered agent for service of process. See *generally*, Texas Workers' Compensation Commission Appeal No. 011845-S, decided September 11, 2001. The case is remanded for the self-insured to provide the true corporate name of the insurance 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 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

Margaret L. Turner
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert W. Potts
Appeals Judge