

APPEAL NO. 062318
FILED JANUARY 22, 2007

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 September 20, 2006. The hearing officer resolved the disputed issues by deciding that: (1) the work injury of _____, does not include a posterior disc protrusion at L5-S1 or disc displacement at C4-7, L3-4 or L5-S1; (2) the respondent (carrier) has waived the right to contest the compensability of the posterior disc at L5-S1, and disc displacement at C4-7, L3-4 and L5-S1 by not contesting the diagnoses in accordance with Section 409.021 and Section 409.022, and thus the carrier is liable for compensation for those diagnosed conditions; and (3) the appellant (claimant) has had disability resulting from the _____, compensable injury from October 26, 2005, through March 7, 2006, but not for any periods from October 6 through October 25, 2005, and from March 8, 2006, through the date of the CCH. The claimant appealed, disputing only that portion of the disability determination of no disability from March 8, 2006, through the date of the CCH. The carrier responded, urging affirmance on the period of no disability from March 8, 2006, through the date of the CCH. The hearing officer's determinations on extent of injury, carrier waiver, and on disability from October 26, 2005, through March 7, 2006, as well as on no disability from October 6 through October 25, 2005, were not appealed and have become final pursuant to Section 410.169.

DECISION

Reversed and remanded for reconstruction of the CCH record.

Section 410.203(a)(1) provides that the Appeals Panel shall consider the record developed at the CCH. The CCH was recorded on one compact disc (CD). The CD indicated that it contained 1 track, which was 59 minutes and 12 seconds long. The entire CD had no sound at all. Consequently, all of the testimony concerning disability cannot be heard. The file indicates that there was no court reporter and the file does not contain a transcript. Consequently, we must remand the case to the hearing officer for reconstruction of the CCH record.

It is clear from the background discussion, Finding of Fact No. 11, and the decision that the hearing officer determined that the claimant did not have disability from October 6 through October 25, 2005. Conclusion of Law No. 4 should be reformed to be in accordance with that determination upon 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 such new decision is received from the Texas Department of Insurance, Division of Workers'

Compensation, 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 Appeals Panel Decision 92642, decided January 20, 1993.

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

**RUSSELL OLIVER, PRESIDENT
6210 HIGHWAY 290 EAST
AUSTIN, TEXAS 78723.**

Cynthia A. Brown
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Margaret L. Turner
Appeals Judge