

APPEAL NO. 091513  
FILED DECEMBER 2, 2009

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 8, 2009. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) sustained a compensable injury on \_\_\_\_\_, and had disability from April 2, 2009, through the date of the CCH.

The appellant (self-insured) appealed the hearing officer's determinations of compensability and disability. The self-insured argued that the hearing officer committed reversible error by allowing the claimant to provide additional evidence in rebuttal argument. The claimant responded to the self-insured's appeal, urging affirmance. The claimant argues that "the abuse of discretion in admitting claimant's closing argument testimony does not constitute reversible error because it is not clear that the error was reasonably calculated to cause and probably did cause the rendition of an improper judgment."

DECISION

Reversed and remanded.

To obtain a reversal of a judgment based upon the hearing officer's abuse of discretion in the admission or exclusion of evidence, an appellant must first show that the admission or exclusion was in fact an abuse of discretion, and also that the error was reasonably calculated to cause and probably did cause the rendition of an improper judgment. Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ). In determining whether there has been an abuse of discretion, the Appeals Panel looks to see whether the hearing officer acted without reference to any guiding rules or principles. Appeals Panel Decision (APD) 951943, decided January 2, 1996; Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986).

The self-insured asserts that the hearing officer erred in allowing the claimant to provide additional testimony during rebuttal argument without giving the self-insured an opportunity to cross-examine the claimant regarding the new information provided. The self-insured objected to the presentation of the additional testimony during rebuttal argument. However, the hearing officer overruled the objection and did not provide the self-insured an opportunity to cross-examine the claimant's additional testimony.

It is undisputed that the claimant's credibility was a significant consideration in the resolution of the disputed issues of compensability and disability before the hearing officer. The claimant acknowledged in her response that the admission of this testimony could have had bearing upon the claimant's general credibility. Under the facts of this case we hold that the hearing officer erred in allowing the claimant to present additional testimony during rebuttal argument without providing the self-insured

an opportunity to cross-examine the claimant regarding the additional testimony. Accordingly, we reverse the hearing officer's determination that the claimant sustained a compensable injury on \_\_\_\_\_, and had disability from April 2, 2009, through the date of the CCH and remand these issues to the hearing officer. On remand the hearing officer should allow the self-insured an opportunity to cross-examine the claimant regarding the additional testimony provided during her rebuttal argument. Any further examination of the claimant should be limited to the new information provided and any further opportunities for redirect examination and re-cross-examination of the claimant should likewise be limited in scope to the new information presented during the rebuttal argument. The hearing officer should then make a determination on the disputed issues.

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 APD 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**LB, SUPERINTENDENT  
(ADDRESS)  
(CITY), TEXAS (ZIP CODE).**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Veronica L. Ruberto  
Appeals Judge