

APPEAL NO. 092082
FILED MARCH 3, 2010

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 30, 2009. The disputed issues before the hearing officer were:

- (1) Did the appellant (claimant) sustain a compensable injury on _____?
- (2) Has the respondent (carrier) waived its right to dispute the compensability of such alleged injury?
- (3) Did the claimant make an election of remedies by accepting benefits payable pursuant to a group health insurance policy?
- (4) Has the carrier waived its right to raise the claimant's alleged election of remedies as a defense?
- (5) Did the claimant sustain disability from April 17 through July 10, 2006?
- (6) Is the carrier liable for benefits accrued pursuant to 28 TEX. ADMIN. CODE § 124.3 (Rule 124.3) resulting from the carrier's alleged failure to timely dispute the claim or initiate payment of benefits?

The hearing officer determined that: (1) the claimant sustained a compensable injury on _____; (2) the carrier waived its right to dispute the compensability of the claimant's injury of _____; (3) the claimant did not make an election of remedies by obtaining benefits payable pursuant to a group health insurance policy; (4) the claimant did not sustain disability from April 17 through July 10, 2006; and (5) Rule 124.3 does not apply to this case. We note that the hearing officer did not make a determination on the issue of whether the carrier waived its right to raise the claimant's alleged election of remedies as a defense.

The claimant appealed the hearing officer's determinations that the claimant did not sustain disability from April 17 through July 10, 2006, and that Rule 124.3 does not apply to this case. The carrier responded, urging affirmance. The hearing officer's determinations that: (1) the claimant sustained a compensable injury on _____; (2) the carrier waived its right to dispute the compensability of the claimant's injury of _____; and (3) the claimant did not make an election of remedies by obtaining benefits payable pursuant to a group health insurance policy, were not appealed and have become final pursuant to Section 410.169.

DECISION

Reversed and remanded for reconstruction of the record.

Section 410.203(a)(1) requires the Appeals Panel to consider the record developed at the CCH. The CCH was recorded on one compact disc (CD). The CD is damaged, containing a crack on the surface. The appeal file does not indicate that a court reporter was present and the file does not contain a transcript or other recording of the proceeding. Consequently, we remand the case for reconstruction of the CCH record. See Appeals Panel Decision (APD) 060353, decided April 12, 2006.

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 **HARTFORD INSURANCE COMPANY OF THE MIDWEST** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
701 BRAZOS STREET, SUITE 1050
AUSTIN, TEXAS 78701-3232.**

Veronica L. Ruberto
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Margaret L. Turner
Appeals Judge