

APPEAL NO. 101245
FILED OCTOBER 14, 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 August 12, 2010. The hearing officer resolved the disputed issues before him by determining that: (1) the appellant (claimant) did not sustain a compensable injury; (2) the date of the claimed injury is _____; (3) the claimant did not have disability; and (4) the respondent (carrier) is relieved from liability under Section 409.002 because of the claimant's failure to timely notify his employer pursuant to Section 409.001. The claimant appealed the hearing officer's determinations on compensability, disability, and failure to timely notify his employer as well as contended that the hearing officer's Background Information section of his decision contained inaccurate information and dates. The carrier responded, urging affirmance but agreeing that the Background Information contains inaccurate dates. The hearing officer's determination that the date of the claimed injury is _____, was not appealed and has 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 enclosed in the file indicates that it is 2 hours, 19 minutes, and 8 seconds long but has no sound. The CCH was also recorded on two audiotapes. The first audiotape is recorded on Side A and Side B. The second audiotape has no sound. The first audiotape at the end of Side B reflects that the audiotape was changed in the middle of the testimony taken at the CCH. The file indicates that there was no court reporter and the file does not contain a transcript. Consequently, we reverse and remand this case to the hearing officer for reconstruction of the CCH record. See Appeals Panel Decision (APD) 100512, decided June 3, 2010.

We note that the hearing officer's decision reveals that there are inaccurate dates contained in the Background Information section. We note that the hearing officer stated that there is conflicting evidence as to whether or not the claimant reported an injury to his supervisor on _____, and to another supervisor on March 15, 2008. The hearing officer determined the date of injury to be _____, therefore it is internally inconsistent for him to discuss timely reporting of the alleged injury on a date prior to the date of injury. The claimant in his appeal pointed out that he testified that he reported his injury to a supervisor on the dates of _____, and on August 15, 2008. Also, the hearing officer stated that the claimant did not seek medical attention until March 15, 2008. This is another internal inconsistency. Also, the carrier in its response to the claimant's appeal stated that the hearing officer incorrectly stated that the claimant's examination with (Dr. B) was on May 26, 2008, but it occurred

on May 26, 2009. The hearing officer should review the evidence and make such determinations on actions and dates that are consistent with the evidence admitted at the CCH.

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 **LIBERTY MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701.**

Cynthia A. Brown
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Margaret L. Turner
Appeals Judge