

APPEAL NO. 120353
FILED APRIL 30, 2012

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 January 26, 2012, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issue by deciding that the compensable injury of [date of injury], does not extend to injuries to C3-4, C4-5, and C5-6, diagnosed as central disc osteophytes, annular disc bulges, spondylosis, and C5-6 radiculopathy. The appellant (claimant) appealed, disputing the hearing officer's determination of the extent of the compensable injury. The claimant contends on appeal that the interpreter at the CCH did not understand or translate the questions correctly as asked by either attorney. The respondent (self-insured) responded, urging affirmance of the disputed determination.

DECISION

Reversed and remanded.

28 TEX. ADMIN. CODE § 140.2(a) (Rule 140.2(a)) provides that the Texas Department of Insurance, Division of Workers' Compensation (Division) on its own motion or upon request, will provide special accommodations to an individual who intends to participate in a proceeding and who does not speak English, or who has a physical, mental, or developmental handicap.

The file indicates that the CCH was recorded on three compact discs (CDs) by the hearing officer. Following the receipt of the claimant's appeal and the self-insured's response, a complete translation (which included the statements of the court interpreter from English into Spanish and from Spanish into English during the CCH as recorded on the CDs and provided by the written transcript) of the proceedings was provided to the Division by the Division's own translator. The CD recording and the Division's own translation were reviewed on appeal.

The Division's translation of the CCH reflects that at various times throughout the CCH, the interpreter improperly translated various terms including medical terms that were being used to describe the nature of the claimant's injury and used terminology that does not exist in the Spanish language. For example, the Division's translator indicates that the word "bulge" was translated incorrectly, using a Spanish word that means "blisters" or "bladders." The claimant's attorney interrupted the proceedings at one point to inform the hearing officer that he was being told by an observer at the CCH that the questions being asked by the self-insured's attorney were not being interpreted correctly.

The claimant contends on appeal that the improper translation caused confusion. The written transcript provided by the Division reflects that terms were used that do not exist in the Spanish language and that key terms used to describe the nature of the claimant's injury were not properly translated. Accordingly, we reverse the hearing officer's determination that the compensable injury does not extend to injuries to C3-4, C4-5, and C5-6, diagnosed as central disc osteophytes, annular disc bulges, spondylosis, and C5-6 radiculopathy and remand the extent-of-injury issue to the hearing officer. On remand, a CCH is to be held and the hearing officer is to provide special accommodations to the claimant pursuant to Rule 140.2(a). After the CCH, the hearing officer is to make a determination based on the evidence presented on the disputed issue.

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 Division, 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 060721, decided June 12, 2006.

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

For service in person the address is:

**JONATHAN D. BOW, EXECUTIVE DIRECTOR
300 W. 15TH STREET
WILLIAM P. CLEMENTS, JR. STATE OFFICE BUILDING, 6TH FLOOR
AUSTIN, TEXAS 78701.**

For service by mail the address is:

**JONATHAN D. BOW, EXECUTIVE DIRECTOR
P.O. BOX 13777
AUSTIN, TEXAS 78711-3777.**

Margaret L. Turner
Appeals Judge

CONCUR:

Cynthia A. Brown
Appeals Judge

Thomas A. Knapp
Appeals Judge