

APPEAL NO. 121650  
FILED OCTOBER 24, 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 June 27, 2012, in [City], Texas, with [hearing officer] presiding as hearing officer. With regard to the five issues before him, the hearing officer determined that: (1) the respondent/cross-appellant (claimant) sustained a compensable injury on [date of injury]; (2) the claimant had disability from August 30 through November 21, 2011, but did not have disability from November 22 through November 25, 2011; (3) the appellant/cross-respondent (carrier) has waived the right to contest the compensability of the claimed injury by not timely contesting the injury in accordance with Sections 409.021 and 409.022; (4) the claimant did not elect to pursue a remedy and recover compensation under the workers' compensation laws of another jurisdiction (Utah), thereby barring recovery under the 1989 Act; and (5) the claimant, who was injured in Georgia, is entitled to all rights and remedies under the 1989 Act.

The carrier appealed the hearing officer's determinations on compensability, carrier waiver, that portion of disability adverse to the carrier, and jurisdiction under Section 406.071 for an extraterritorial injury. The carrier further contended that the hearing officer erred in failing to make findings of fact regarding the claimant's significant contacts, if any, with Texas as required for a determination under Section 406.071 and regarding the claimant's principal location of employment under Sections 406.072 and 406.073. The carrier also contended that it timely filed a dispute after receiving notice that the claimant was pursuing workers' compensation benefits in Texas and in the alternative, that the notice of the Texas claim was newly discovered evidence under Sections 409.021 and 409.022. The appeal file does not contain a response to the carrier's appeal.

The claimant cross-appealed that portion of the hearing officer's disability determination adverse to the claimant, contending that the claimant had disability for the period from November 22 through November 25, 2011. In the disputed issue before the hearing officer, the entire claimed period of disability was from August 30 through November 25, 2011. The carrier responded to the claimant's cross-appeal, urging affirmance of the claimant's disputed portion of the disability determination.

The hearing officer's determination that the claimant did not elect to pursue a remedy and recover compensation under the workers' compensation laws of another jurisdiction (Utah), thereby barring recovery under the 1989 Act, 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 appeal file in this case indicates there is only one compact disc (CD) for the CCH and the appeal file does contain one CD (a length of 1 hour 55 minutes and 5 seconds). However, the CD in the appeal file does not contain a complete recording of the CCH. The CD recording was stopped after the claimant's testimony during the claimant's case-in-chief when the hearing was recessed for a break.

The CD recording was not immediately turned back on after the recess or, for whatever reason, did not record immediately after the recess. The hearing officer's decision indicates that not only did the claimant testify at the CCH, but that also [VB], [EE], and [PS] testified during the carrier's case-in-chief at the CCH.

The CD recording was turned back on or resumed recording during the middle of the claimant's closing argument and continued through the carrier's closing argument and the claimant's rebuttal argument to the conclusion of the CCH, when the record was closed.

The file indicates that there was no court reporter and the file does not contain a transcript, or tape recording of the complete CCH proceeding. Consequently, we reverse and remand this case to the hearing officer for reconstruction of the complete CCH record. See Appeals Panel Decision (APD) 060353, decided April 12, 2006.

Furthermore, we note from a review of the CD that the carrier did not stipulate that "[v]enue is proper in the [City] Field Office of the Texas Department of Insurance, Division of Workers' Compensation [(Division)]" as stated in the hearing officer's decision. On remand the hearing officer is to correctly state the stipulation or make the necessary finding of fact and conclusion of law regarding venue in this case.

Further, we note that Section 406.071 entitled Extraterritorial Coverage provides:

An employee who is injured while working in another jurisdiction . . . is entitled to all rights and remedies under this subtitle if:

the injury would be compensable if it had occurred in this state; and

the employee has significant contacts with this state or the employment is principally located in this state.

An employee has significant contacts with this state if the employee was hired or recruited in the state and the employee:

was injured not later than one year after the date of hire; or

has worked in this state for at least 10 working days during the 12 months preceding the date of injury.

Further, Section 406.072, entitled Principal Location, provides that the principal location of a person's employment is where:

the employer has a place of business at or from which the employee regularly works; or

the employee resides and spends a substantial part of the employee's working time.

Section 406.073(a), a portion of the section entitled Agreement on Principal Location; Administrative Violation, provides:

An employee whose work requires regular travel between this state and at least one other jurisdiction may agree in writing with the employer on the principal location of the employment.

On remand, the hearing officer is to make the necessary findings of fact and conclusions of law concerning extraterritorial coverage as required by the 1989 Act. See Sections 406.071(a)(2) and (b)(2).

Furthermore, the carrier contended at the CCH and included in its appeal the argument regarding the filing of a Texas workers' compensation claim by the claimant subsequent to the filing of a Utah workers' compensation claim by the employer as newly discovered evidence under Sections 409.021 and 409.022. On remand, the hearing officer is to make the necessary findings of fact and conclusions of law as required under Sections 409.021 and 409.022. See Sections 409.021(d) and 409.022(b).

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. APD 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **GREAT WEST CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**DAVID L. SARGENT  
901 MAIN STREET, SUITE 5200  
DALLAS, TEXAS 75202.**

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Cynthia A. Brown  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Margaret L. Turner  
Appeals Judge