

APPEAL NO. 122115
FILED DECEMBER 17, 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 July 11, 2012, with the record closing on September 11, 2012, in [City], Texas, with [hearing Officer] presiding as hearing officer. With regard to the disputed issues before him, the hearing officer determined that: (1) the compensable injury sustained on [date of injury], extends to tricompartmental osteoarthritis, the bipartite patella, and the loose bodies in the right knee; and (2) the compensable injury sustained on [date of injury], does not extend to osteophyte fracture, degenerative changes in the anterior horn and root of the lateral meniscus, and high grade chondromalacia with subchondral cystic in the right knee.

The appellant (carrier) appealed that portion of the hearing officer's extent-of-injury determination adverse to the carrier. Respondent 1 (claimant) responded, urging affirmance of the disputed extent-of-injury determination. The appeal file does not contain a response from respondent 2 (subclaimant) to the carrier's appeal.

That portion of the hearing officer's extent-of-injury determination that the compensable injury sustained on [date of injury], does not extend to osteophyte fracture, degenerative changes in the anterior horn and root of the lateral meniscus, and high grade chondromalacia with subchondral cystic in the right knee 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 are two compact discs (CD) for the CCH and the appeal file does contain two CDs. The CCH began on July 11, 2012, and the CD recording for that setting is 1 hour 2 minutes. However, the CD is incorrectly labeled as a recording done on July 11, 2011, rather than on July 11, 2012. After the CCH was convened on July 11, 2012, there was evidence on the merits of the claim, documents admitted, and testimony by the claimant. At the conclusion of that setting, the hearing officer stated that he would keep the record open in order to send a 10-day letter to the subclaimant not present at the July 11, 2012, setting. The file contains a 10-day letter addressed to the subclaimant. We note that the hearing officer failed to mark and admit as hearing officer exhibits the 10-day letter to and the response of the subclaimant, requesting that the CCH be re-scheduled for the subclaimant to appear. Further, the file contains documents sent to the Texas

Department of Insurance, Division of Workers' Compensation (Division) by the subclaimant, but are not marked as exhibits. The hearing officer's decision indicates that there were no exhibits for the subclaimant.

The CCH was reconvened on September 11, 2012, and the subclaimant appeared at that setting as evidenced by the sign-in sheet included in the file. The CD recording for the September 11, 2012, setting is blank as well as incorrectly labeled with the date of September 10, 2012.

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, which includes the proceedings on July 11, 2012, and on September 11, 2012. 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 July 11, 2012, CD recording that the claimant testified regarding the mechanism of injury. In the Background Information section of the decision, the hearing officer stated:

The [c]laimant was going down steps from a piece of heavy equipment he was operating on [date of injury], when he slipped on the steps. He has said he felt a pop in his right knee, it hyperextended, and he fell and landed on his right knee.

The claimant at the July 11, 2012, CCH, assisted by a translator, did not testify that he fell and landed on his right knee. The letter of causation written by [Dr. C] relates some of the claimed extent-of-injury conditions to a direct fall onto the kneecap.

On remand, the hearing officer is to admit necessary exhibits regarding the 10-day letter sent to the subclaimant and any exhibits offered by the subclaimant and admitted at the September 11, 2012, CCH setting.

The hearing officer is to reconstruct the record for the September 11, 2012, CCH proceedings.

The hearing officer is to make the necessary findings of fact and conclusions of law, which are supported by the evidence, on the appealed disputed conditions of tricompartmental osteoarthritis, the bipartite patella, and the loose bodies in the right knee.

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

**RON O. WRIGHT, PRESIDENT
6210 EAST HIGHWAY 290
AUSTIN, TEXAS 78723.**

Cynthia A. Brown
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Margaret L. Turner
Appeals Judge