

APPEAL NO. 132506
FILED DECEMBER 13, 2013

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 September 17, 2013, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the respondent's (claimant) compensable [date of injury], injury extends to the diagnosed lumbar disc herniation at L4-5 and lumbar disc bulge with radiculopathy at L5-S1; (2) the claimant's compensable [date of injury], injury does not extend to a lumbar disc bulge at L3-4; (3) the claimant has not reached maximum medical improvement (MMI) as of December 5, 2012, per [Dr. R] report; (4) the issue of impairment rating (IR) is not ripe since the date of MMI has not yet been determined; (5) the claimant had disability due to his compensable [date of injury], injury from December 6, 2012, through January 1, 2013, and from July 25 through September 17, 2013, the date the record closed; and (6) the claimant did not have disability from January 2 through July 24, 2013.

The appellant (carrier) appealed, disputing the hearing officer's determinations that the claimant has not reached MMI as of December 5, 2012, per Dr. R's report and that the IR is not ripe since the date of MMI has not yet been determined. The carrier additionally appealed the hearing officer's determinations that the compensable injury of [date of injury], extends to a lumbar disc herniation at L4-5 and lumbar disc bulge with radiculopathy at L5-S1 as well as the determinations that the claimant had disability from December 6, 2012, through January 1, 2013, and from July 25 through September 17, 2013. The appeal file does not contain a response from the claimant to the carrier's appeal.

The hearing officer's determinations that the compensable injury of [date of injury], does not extend to a lumbar disc bulge at L3-4 and that the claimant did not have disability due to his compensable [date of injury], injury from January 2 through July 24, 2013, were not appealed and have become final pursuant to Section 410.169.

DECISION

Reversed and remanded.

Section 410.203(a)(1) requires the Appeals Panel to consider the record developed at the CCH. The appeal file contains one compact disc (CD). The CD lists the recording as being approximately nine seconds long. In the recording, the hearing officer notes that the device was not recording. Consequently, a full review of the record could not be completed. The file indicates that there was no court reporter and the file does not contain a transcript or a tape recording of the CCH proceeding.

Consequently, we reverse and remand this case to the hearing officer 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 **ACCIDENT FUND INSURANCE COMPANY OF AMERICA** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET, SUITE 2900
DALLAS, TEXAS 75201-4234.**

Margaret L. Turner
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Carisa Space-Beam
Appeals Judge