

APPEAL NO. 142247  
FILED DECEMBER 5, 2014

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 February 12, 2014, with the record closing on September 12, 2014, in Waco, Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the appellant (claimant) reached maximum medical improvement (MMI) on January 7, 2013; (2) the claimant's impairment rating (IR) is five percent; and (3) the claimant had disability resulting from the compensable injury of [Date of Injury], from January 8, 2013, to the date of the CCH. The claimant appealed, disputing the hearing officer's determinations of MMI and IR. The respondent (carrier) responded, urging affirmance of the disputed determinations.

The hearing officer's determination that the claimant had disability resulting from the compensable injury of [Date of Injury], from January 8, 2013, to the date of the CCH 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 contains two compact discs (CD) which are duplicates. Review of the CDs indicates that they have a recording of the February 12, 2014, CCH that is 13 minutes and 19 seconds long. The recordings cut off during the claimant representative's opening statement. Consequently, there is an incomplete recording of the CCH on February 12, 2014. The file indicates that there was no court reporter and the file does not contain a transcript. We reverse and remand this case to the hearing officer who presided over the initial CCH, if possible, for reconstruction of the CCH record. See Appeals Panel Decision (APD) 060353, decided April 12, 2006.

Pursuant to Section 410.203(c), the Appeals Panel may not remand a case more than once. Given that we are remanding this case for reconstruction of the record, we have reviewed the documentary evidence, the hearing officer's decision, the appeal, and the response with regard to the issues in dispute.

With regard to the issues of MMI and IR, the hearing officer adopted the certification of (Dr. M), the treating doctor. In discussing his rationale for adopting this certification, the hearing officer states in the Discussion portion of his decision that a

complex tearing of the rotator cuff repair was discovered almost six months after Dr. M's evaluation on January 7, 2013, and that a worsening of the injured employee's condition after the date of MMI does not automatically move the potential date of MMI. However, we note that in evidence is an operative report dated September 3, 2012, by (Dr. C), who is the same surgeon that performed the rotator cuff repair on July 16, 2012. In the September 3, 2012, operative report, Dr. C states that a diagnostic arthroscopy was done and "[i]t revealed a complete tear of the rotator cuff." Dr. C went on to state that the repair had failed, and there was not an extensive repair done again. Furthermore, in Finding of Fact No. 11, the hearing officer states that the certification of (Dr. G), a doctor selected by the treating doctor to act in his place, that the claimant was not at MMI, was based on the claimant's possible need for health care for the complex tear of his left shoulder rotator cuff repair, "a condition that was not shown to exist at the time of Dr. [M's] certifying examination." This Finding of Fact is not supported by sufficient evidence.

It is clear from the record that the date of statutory MMI in this case has passed; however, we do not have sufficient evidence of that date. The Appeals Panel has previously held that it is legal error to determine a claimant has not reached MMI in a decision and order dated after the date of statutory MMI. See APD 131554, decided September 3, 2013.

We further note that there is a clerical error in the hearing officer's decision regarding the mailing address for the carrier's registered agent for service of process. At the CCH held on February 12, 2014, the hearing officer admitted as Hearing Officer's Exhibit 2 the carrier information sheet, which provides that the carrier is Twin City Fire Insurance Company and that the name and address of its registered agent for service of process is CT Corporation System, 350 North Paul Street, Suite 2900, Dallas, Texas 75201-4234. The hearing officer incorrectly states in his decision that the address of the registered agent for service of process is 1999 Bryan Street, Suite 900, Dallas, Texas 75201-3136.

Accordingly, we reverse and remand this case to the hearing officer for reconstruction of the record. On remand, the hearing officer is to: (1) reconstruct the record; (2) take a stipulation from the parties or make a specific finding of fact on the date of statutory MMI; (3) correct the address for the carrier's registered agent for service of process; and (4) make findings of fact, conclusions of law, and a decision and order on the issues of MMI and IR consistent with this decision. If there is no certification in evidence that can be adopted, the hearing officer is to take new evidence in order to make determinations on the issues of MMI and IR that are consistent with this decision.

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 **TWIN CITY FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

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

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Cristina Beceiro  
Appeals Judge

CONCUR:

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Carisa Space-Beam  
Appeals Judge

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Margaret L. Turner  
Appeals Judge