

APPEAL NO. 152499
FILED FEBRUARY 11, 2016

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Records from the Texas Department of Insurance, Division of Workers' Compensation (Division) indicate that contested case hearings (CCH) were held on April 23, 2015, July 21, 2015, September 22, 2015, and October 28, 2015, and the record closed on November 23, 2015, in Fort Worth, Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the compensable injury of (date of injury), extends to C6-7 broad based disc protrusion, L2-3 annular disc bulge, L3-4 disc protrusion, L4-5 disc protrusion, L5-S1 disc bulge and aggravation of degenerative disc disease, thoracic sprain/strain, and thoracic disease disc displacement; (2) the respondent (claimant) has not reached maximum medical improvement (MMI); (3) because the claimant has not reached MMI, no impairment rating (IR) can be assigned at this time; and (4) the claimant had disability resulting from the compensable injury beginning on January 27, 2014, and continuing through January 31, 2015.

The appellant (carrier) appealed the hearing officer's determinations based on sufficiency of the evidence. The claimant responded, urging affirmance of the hearing officer's determinations.

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 one compact disc (CD) containing a recording of the CCH held on October 28, 2015, which is one hour, thirteen minutes, and thirty-eight seconds long. The hearing officer stated on this CD that a CCH was held on April 23, 2015, reconvened on July 21, 2015, continued to September 22, 2015, and reconvened on October 28, 2015. Division records confirm that the CCHs were held on the dates stated by the hearing officer on the CD. We note that the decision and order mistakenly states the parties entered into stipulations on April 25, 2015, rather than April 23, 2015.

There is an incomplete record of the CCHs held in this case. 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 CCHs, 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 CD of the October 28, 2015, CCH, the documentary evidence, the hearing officer's decision, the appeal, and the response with regard to the issues in dispute.

The hearing officer determined that the claimant had disability beginning on January 27, 2014, and continuing through January 31, 2015. The claimant testified at the October 28, 2015, CCH, that he had worked for a different employer for approximately 10 days beginning on February 27, 2014. In evidence is a letter from the claimant dated March 19, 2014, in which the claimant stated he had "worked 14 days for [Pacific Rail Services (PRS)]." Also in evidence is a letter from PRS dated March 21, 2014, which states that "the Assistant Coordinator position that you were selected for has been abolished. We are placing you in layoff status effective today, [March 21, 2014]." The claimant also testified that he returned to work for another unrelated employer on February 1, 2015, after the period of disability at issue. Although the hearing officer noted the claimant's return to work on February 1, 2015, the hearing officer did not discuss the claimant's return to work during the disability period at issue, which directly impacts his disability determination. On remand the hearing officer is to address the claimant's return to work with a different employer during the disability period at issue, including the hours the claimant worked and the amount the claimant was paid.

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) correct the date the parties entered into stipulations from April 25, 2015, to April 23, 2015; (3) make findings of fact, conclusions of law, and a decision and order on the issue of disability consistent with this decision; and (4) make a determination on the extent of the compensable injury, MMI, and IR.

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 APD 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **ACE AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
1999 BRYAN STREET, SUITE 900
DALLAS, TEXAS 75201-3136.**

Carisa Space-Beam
Appeals Judge

CONCUR:

K. Eugene Kraft
Appeals Judge

Margaret L. Turner
Appeals Judge