

APPEAL NO. 160129
FILED MARCH 21, 2016

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 December 14, 2015, in Abilene, 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), does not extend to an aggravation to C3-4 and C4-5 disc herniations with resulting cervical radiculitis and cervicalgia; (2) the appellant (claimant) reached maximum medical improvement (MMI) on December 1, 2014; and (3) the claimant's impairment rating (IR) is nine percent.

The claimant appealed, disputing the hearing officer's determinations of the extent of the compensable injury, MMI and IR. The claimant argued that the evidence demonstrated that the disputed diagnoses were part of the compensable injury and that he has not yet reached MMI, so no IR should be issued. The respondent (carrier) responded, urging affirmance of the disputed determinations.

DECISION

Reversed and remanded for reconstruction of the record.

The parties stipulated that the claimant sustained a compensable injury and that the carrier has accepted as compensable cervical and lumbar strains. We note the hearing officer made a finding of fact that the right shoulder sprain/strain arose out of or naturally flowed from the compensable injury. This finding of fact was not appealed.

Section 410.203(a)(1) requires the Appeals Panel to consider the record at the CCH. The appeal file contains a compact disc (CD) recording of the CCH but is only 12 minutes and 14 seconds long. The CD contains a recording of the preliminary matters and opening arguments. The claimant was testifying on direct examination when the recording abruptly stopped. The appeal 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 who presided over the December 14, 2015, CCH, if possible, 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 **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MR. RICHARD J. GERGASKO, PRESIDENT
6210 EAST HIGHWAY 290
AUSTIN, TEXAS 78723.**

Margaret L. Turner
Appeals Judge

CONCUR:

K. Eugene Kraft
Appeals Judge

Carisa Space-Beam
Appeals Judge