

APPEAL NO. 91008
AUGUST 16, 1991

This appeal arises under the Texas Workers' Compensation Act of 1989. On June 7, 1991, a contested case hearing was held at _____, Texas, (hearing officer) presiding as hearing officer. The hearing officer determined that appellant (claimant) was not injured in the course and scope of his employment on (date of injury), and denied his claim for benefits under the Texas Workers' Compensation Act. Claimant requests that we review the decision of the hearing officer and find in his favor.

DECISION

Having considered the request for review, the response to the request for review, and the record developed at the contested case hearing, we reverse the decision of the hearing officer and remand the cause to the hearing officer for further consideration and development of evidence on the two matters discussed below.

The statement of evidence in the hearing officer's decision reflects that claimant testified that he told Mr. J (a coworker) he had hurt his back and that Mr. J helped him do his work the remainder of the day. It also reflects that Mr. J testified to the contrary in that claimant did not tell him he had fallen. The hearing officer found, in Finding of Fact 4(d), that claimant did not mention his injury to any person at the work site on (date of injury).

In reviewing the record, it was unclear to us whether claimant was referring to Mr. J or Mr. M (another coworker) when he testified that he told "him" about falling and hurting his back and that "he" pulled the weight the rest of the day. The uncertainty arises because in response to a question two questions before this testimony, claimant referred to Mr. M after having clarified that it was Mr. J who motioned him down. We also note Mr. M's written statement admitted at the hearing wherein Mr. M stated that claimant told him about falling and hurting himself.

The hearing officer should develop evidence on whether it was Mr. J or Mr. M claimant was referring to in his testimony, judge the relevance and materiality of this evidence and the weight and credibility to be given to this evidence, and then consider whether the evidence supports or does not support those portions of the hearing officer's statement of evidence to which it relates, Finding of Fact 4(d), and the Conclusions of Law and Decision.

The hearing officer did not permit claimant to testify concerning his alleged telephone conversations with a Mr. T who was identified as the employer's safety director by the employer's general foreman. This testimony was excluded as hearsay. The record does not reflect what claimant's testimony would have been because the hearing officer did not permit claimant to make an offer of proof on the excluded testimony. We request that the hearing officer permit the parties to elicit testimony on the record from claimant and Mr. T concerning Mr. T's alleged statements to claimant in these telephone

conversations. The hearing officer should then determine whether Mr. T's statements, if any, are admissible evidence under the concepts of admission by party-opponent or statement against interest as asserted by claimant at the hearing, or whether such statements, if any, are admissible under a similar concept as determined by the hearing officer, keeping in mind that conformity to legal rules of evidence is not necessary at a contested case hearing.

If the hearing officer finds that Mr. T's statements, if any, are admissible, then we request the hearing officer to judge the relevance and materiality of this evidence and the weight and credibility to be given to this evidence and then give due consideration to his findings of fact, conclusions of law, and decision in light of the developed evidence.

The decision and order of the hearing officer are reversed and the cause is remanded to the hearing officer for further consideration and development of evidence consistent with this decision on appeal. The hearing on remand shall be accelerated to give priority to the hearing over other proceedings as provided by Tex. Rev. Civ. Stat. Ann. art. 8308-6.42(b)(3).

Robert W. Potts
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Joe Sebesta
Appeals Judge