

APPEAL NO. 93059
FILED MARCH 3, 1993

This appeal arises under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-1.01 *et seq.* (Vernon Supp. 1993) (1989 Act). A contested case hearing was held on December 4, 1992, to determine whether the respondent (claimant) was entitled to the payment of temporary income benefits (TIBS) for the period July 8 through August 18, 1992. The hearing had been earlier set for November 20, 1992 but was continued to December 4th at the request of appellant, the self-insured employer (carrier). No representative of the carrier appeared at the hearing.

The hearing officer determined that claimant was entitled to the payment of TIBS by carrier for the period in question because the payments he received during that period from his employer had already been earned under his 183 day teacher contract and had simply been spread over a 12 month period. Accordingly, the hearing officer concluded claimant suffered disability during that period as a result of his work-related injury, the compensability of which was not contested.

Carrier appeals the hearing officer's decision contending that its attorney, who filed a motion to continue the original November 20, 1992 setting for the hearing, did not receive notice that the hearing was reset for December 4th at 1:00 p.m., but conceding that carrier's servicing contractor in Austin, Texas (Austin representative), did receive such notice on December 1st. Accordingly, employer asserts it did not have sufficient notice of the hearing and asks the Texas Workers' Compensation Commission (Commission) Appeals Panel to remand the case for another hearing. Carrier's request for review does not address the merits of the hearing officer's determination of the disputed issue. Claimant filed no response to the request for review.

DECISION

Finding no reversible error and sufficient evidence to support the findings and conclusions of the hearing officer, we affirm.

The hearing officer's exhibits showed that by letter dated October 6, 1992, the Commission provided notice of the date, time, and place of the hearing set for November 20th to claimant, to carrier, and to carrier's Austin representative. (Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE ' 141.7(d) (Rule 141.7(d)) provides that such notice be furnished to the claimant, to the claimant's representative, if any, to the insurance carrier, and to the employer; Rule 142.6(c) provides that such notice be furnished to the parties; Rule 140.1 defines party to a proceeding; Rule 102.5(b) provides that unless otherwise specified by rule, all notices and communications to an insurance carrier will be sent to its Austin representative.) The Commission's October 6th letter is deemed to have been received by the parties on October 11, 1992. *See* Rule 102.5(h). On November 18th, two days before the hearing, carrier moved for a continuance. Claimant advised the Commission on November 18th that he opposed the motion because he had already arranged to be off work for the hearing and for the hiring of a substitute teacher to replace him. The Commission granted carrier's motion and reset the hearing for December 4th at 1:00 p.m. (order and notice). Since the original setting was for November 20th, there may well have been telephonic communication with the carrier concerning its motion and the resetting. The letter transmitting the order and notice bore the typewritten date of November 19th whereas the date of November 23rd on the order and notice was handwritten. Thus it would appear that the typewritten date of November 19th on the letter transmitting the order and notice was inaccurate. Be that as it may, however, the letter transmitting the order and notice was addressed to claimant, and to the carrier in care of its Austin representative, and reflected that another copy was also sent to carrier's Austin representative. The order and notice contained the information required by Rule 142.10(d). There is no requirement in the Commission's rules for service of notice of a continued hearing on the attorney for the insurance carrier. Texas Workers' Compensation Commission Appeal No. 92123, decided May 11, 1992.

When the hearing convened on December 4th, no representative appeared for carrier. While the hearing officer did not further continue the hearing on his own motion, he did indicate he would leave the record open upon the conclusion of the hearing that day for

the purpose of permitting the carrier to make a good cause showing as to why any additional continuance should be granted. The claimant proceeded to testify, no documentary evidence was offered, and the hearing concluded that day. According to a hearing officer exhibit dated December 9th, the Commission conferred by telephone with carriers' Austin representative and was advised that the Austin representative did receive the Commission's order and notice of the December 4th hearing but felt that such notice was not sufficient since it was, apparently, not received until December 1st. According to the hearing officer's discussion of the case in his Decision and Order, while the order and notice was mailed on November 23rd and was received by carrier's Austin representative, no representative of the carrier ever contacted the hearing officer or the Commission or made any effort to appear at the December 4th hearing. The hearing officer stated that claimant received his copy of the order and notice in ample time and once again arranged to be off work and for a substitute teacher.

The hearing officer also stated that he found no good cause to further continue the case, and that further continuance would cause undue hardship to the claimant. Rule 142.10(b)(2) permits the Commission to continue a hearing on its own motion or at the request of a party if the hearing officer determines the party has good cause. Requests made before a hearing are to be in writing and state the reason. A party making a request orally during a hearing must show, in addition to good cause, that a continuance will not prejudice the rights of the other parties. Rule 142.11 provides that failure to attend a hearing without good cause is a Class C administrative violation with a penalty not to exceed \$1,000.00.

Rulings of hearing officers granting or denying requests for the continuance of hearings are reviewed for abuse of discretion. *See e.g.* Texas Workers' Compensation Commission Appeal No. 91041, decided December 17, 1991, and Texas Workers' Compensation Commission Appeal No. 91052, decided November 27, 1991. Under the circumstances of this case, we find no abuse of discretion by the hearing officer in not

further continuing the hearing, either on his own motion or at the request of the carrier, if indeed any such request was ever made.

Although the carrier has raised no appealed issue regarding the merits of the hearing officer's determination of the disputed issue, we briefly recite the factual situation in this case. Claimant had a 10 month or 183 day teacher's term contract for the 1991/1992 school term. On _____ he was kicked in the knee by a student and sustained a compensable knee injury for which he deferred surgery until June 12th after the school term ended. Claimant's salary for the services he performed under his teacher's contract was spread over 12 months by another agreement he signed selecting that payment option. His salary payments received after June 1st were for services he had already performed and he had no further obligations under his teacher's contract until the beginning of the next school term on or about August 31, 1992. However, claimant had made arrangements, under still another contract, to teach summer school but was unable to do so because he was recovering from the knee surgery. We invite the parties' attention to our decision in Texas Workers' Compensation Commission Appeal No. 92688, decided February 5, 1993, where we affirmed the hearing officer's determination that a teacher had disability from June 12 through August 12, 1992, a period when she was recovering from knee surgery which had been deferred to the end of the school term. She, too, had completed her performance of services under her teacher's term contract but had annualized her salary payments.

The decision of the hearing officer is affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge