

APPEAL NO. 990400

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On February 3, 1999, a hearing was held. He determined that death benefits payable on behalf of decedent should be paid to the Subsequent Injury Fund. Appellants (claiming beneficiaries) state on appeal that no notice of the hearing was provided, and therefore evidence as to proper beneficiaries was not provided. The appeals file contains no reply from the respondent (carrier).

DECISION

We reverse and remand.

Claiming beneficiaries (the parents of decedent) represent that no notice of a hearing was received. This is consistent with the record of the hearing that showed no claiming beneficiaries were present; that record also showed that the carrier represented there were no legal beneficiaries. Representations were made that decedent was divorced and had no children.

The hearing officer's decision was distributed on February 10, 1999, and a copy appears to have been mailed to decedent, which reached his parents in City. By affidavit attached to the appeal, TH states that he is decedent's father, that the decision of the hearing officer was received on February 12, 1999, in an envelope postmarked February 10, 1999, but maintains that he did not receive notice of the February 3, 1999, hearing. The appeal was timely filed on February 25, 1999.

Texas Workers' Compensation Commission Appeal No. 92237, decided July 22, 1992, provided that, while the Texas Workers' Compensation Commission (Commission) can act at a hearing without all parties being present, it must show that written notice, providing notice of the time and place of the pending hearing, has been provided to the parties in accordance with the 1989 Act and applicable rules. Such notice to the claiming beneficiaries has not been shown to have been given; therefore the case is remanded for another hearing with notice to be provided to claiming beneficiaries; on remand relevant issues will be addressed, the evidence will be reconsidered, to include admitting additional evidence, as proper, by either party to the proceedings, and findings of fact and conclusions of law will be made as applicable. *Also see* Texas Workers' Compensation Commission Appeal No. 980760, decided June 1, 1998.

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 Commission's Division of Hearings, pursuant to Section 410.202. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

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Joe Sebesta  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Elaine M. Chaney  
Appeals Judge