

APPEAL NO. 990545

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 February 22, 1999. She (hearing officer) determined that the appellant (claimant) did not sustain a compensable mental trauma injury on _____, and that he did not have disability. The claimant appeals these determinations, requesting that his claim "be approved." The respondent (carrier) replies that the decision is correct and should be affirmed.

DECISION

Reversed and remanded.

The benefit review conference in this case was held on December 28, 1998. The parties were unable to resolve the disputed issues and a CCH was set, with proper notification to the parties, to convene on February 22, 1999. On January 7, 1999, the claimant wrote the hearing officer, as follows:

It is regret [sic] that I do not and can not pursue this contested case any longer, due to health reasons and no other. This request in no way changes the fact that I did file a valid claim.

There is no indication that a copy of the letter was sent to the carrier. Nor does it appear that the Texas Workers' Compensation Commission responded to this letter or otherwise informed the carrier that it was received.

The CCH convened on February 22, 1999. The claimant was not present. No evidence was introduced. In her decision and order, the hearing officer commented that, pursuant to the claimant's letter, he "no longer wished to pursue" this case. She then found that the claimant did not meet his burden of proof on either issue and found accordingly.

In his appeal, the claimant reiterated that he did not appear at the CCH "due to continued illness as a result of Major Depression." We do not consider the January 7, 1999, letter to constitute an abandonment of the claim, as apparently the hearing officer did in rendering her decision, but rather construe it to be a request for continuance. As such, the claimant was entitled to a timely response from the hearing officer answering this request. See Section 410.155; Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.10 (Rule 142.10); Texas Workers' Compensation Commission Appeal No. 960199, decided March 13, 1996. In addition, we have noted that generally, one failure to appear by either party at a CCH may constitute an administrative violation, but does not preclude that party from introducing evidence at a later CCH. See Texas Workers' Compensation Commission Appeal No. 941679, decided February 2, 1995. For these reasons, and under the particular facts of this case, we reverse the decision of the hearing officer and remand this case to the hearing officer to develop the evidence as necessary and to determine if there is good

cause to grant a continuance. If good cause is found, the CCH should be reset. If good cause for a continuance is not found, the hearing officer should, consistent with past practice, set a show cause hearing to determine if good cause existed for the claimant's failure to appear at the February 22, 1999, CCH. If the claimant appears at this show cause hearing, further evidence on the merits of the disputed issues may be taken. Texas Workers' Compensation Commission Appeal No. 981067, decided July 9, 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.

Alan C. Ernst
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCURRING OPINION:

I concur in the decision to remand this case to the hearing officer. I write separately to emphasize that whatever the hearing officer's resolution of the claimant's continuance request or her determination with respect to the question of good cause for his failure to appear at the hearing, she is required to provide the claimant with an opportunity to present evidence on the merits of this case. Texas Workers' Compensation Commission Appeal No. 981067, decided July 9, 1998; Texas Workers' Compensation Commission Appeal No. 962387, decided January 14, 1997; Texas Workers' Compensation Commission Appeal No. 950083, decided March 1, 1995; Texas Workers' Compensation Commission Appeal No. 950044, decided February 21, 1995; Texas Workers' Compensation Commission Appeal No. 941679, decided February 2, 1995. The requirement that the hearing officer schedule a hearing on the merits would arise in this case whether or not the claimant had filed a request for continuance. I note, however, that generally if a party misses more than one hearing we have determined that there is no abuse of discretion in the hearing officer's action of closing the record and issuing a decision on the merits adverse to the party who failed to appear at more than one hearing. Texas Workers' Compensation Commission

Appeal No. 971333, decided September 2, 1997 (Unpublished); see *a/so* Texas Workers' Compensation Commission Appeal No. 982567, decided December 14, 1998 (Unpublished).

Elaine M. Chaney
Appeals Judge