

APPEAL NO. 991155

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 convened on April 19, 1999. The issue to be heard was whether the appellant (claimant) sustained a lumbar injury and left wrist carpal tunnel syndrome (CTS), in addition to a compensable fractured left wrist, on _____. The hearing officer noted on the record that the claimant was not present, that his representative was present, that no evidence or exhibits would be taken, and that a 10-day letter would be sent to the claimant for a response. The hearing was adjourned. According to the file, a letter dated April 19, 1999, was sent by the hearing officer to the claimant at his proper address and advised the claimant that he had not appeared at the scheduled CCH, and that he "may contact this Commission [Texas Workers' Compensation Commission] within ten (10) days of the date of this letter to request that the BCCH in this matter be reconvened to permit you to present evidence on these issues, and to show cause why you failed to attend the BCCH [benefit contested case hearing]." On May 5, 1999, hearing officer issued a Decision and Order indicating that, as of May 4, 1999, the claimant had not responded and that the Decision and Order was prepared. She determined that the claimant failed to prove a lumbar and a CTS injury; that the claimant knew of the April 19, 1999, CCH; and that good cause was not shown in the record for the claimant's failure to attend. The claimant now appeals and, through his representative, states that he received the 10-day letter on April 25, 1999; that he contacted his representative on April 28, 1999; and informed him he was ill on April 19, 1999, and that he asked his representative to request his BCCH be rescheduled. A letter to the Commission submitted by the representative and received as "hand delivered" by the Commission on May 3, 1999, indicates that the claimant was ill on the date of his CCH and that a request was made to reschedule the CCH for another date. The claimant asks that the decision be reversed and remanded for reconsideration and development of evidence and the issues. No response has been filed on behalf of the carrier.

DECISION

Affirmed.

Although the record is silent regarding why the letter receipted for by the Commission on May 3, 1999, was apparently not in the file or considered by the hearing officer (she indicated that as of May 4, 1999, the claimant had not responded to the 10-day letter), it is clear from the record that the claimant failed to comply with the timely response terms of the letter which required a response not later than April 29, 1999. Where a party fails to appear at a scheduled CCH, the Appeals Panel has held that regardless of good cause for the single failure to appear, that party may subsequently present his or her evidence at a subsequent hearing. Texas Workers' Compensation Commission Appeal No. 970121, decided March 4, 1997. However, what we have here is a failure to appear at the scheduled CCH, followed by a letter to the claimant giving an opportunity to respond within 10 days, and the subsequent failure to respond within the terms specified in the letter. Under these circumstances, we can find no abuse of discretion in the entering of a final

Decision and Order. Although the hearing officer states that the claimant had not responded by May 4th and there was evidence indicating a hand-delivered letter was received for by the Commission sometime on May 3rd (there is no indication of whether or why the letter was not placed in the hearing file), that does not detract from the fact that a timely response to the letter was not made. Thus, with the failure to appear at the scheduled CCH followed by the failure to timely respond to the letter from the hearing officer to the claimant, the hearing officer did not abuse her discretion in issuing the final decision. See Texas Workers' Compensation Commission Appeal No. 990028, decided February 22, 1999. Further, without any testimony or other evidence to evaluate, that a second hearing officer was appointed to the case was not error. Texas Workers' Compensation Commission Appeal No. 941569, decided January 5, 1995. The decision and order are affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Tommy W. Lueders
Appeals Judge

Dorian E. Ramirez
Appeals Judge