APPEAL NO. 991223

This appeal arises pursuant to the 1989 Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On March 10, 1999, and May 11, 1999, a hearing was held. She determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBS) for the sixth compensable quarter. Claimant asserts that he objected to the site of the hearing since it was over 75 miles from his residence, adding that no good cause was found to have the hearing at the site in (City 1), Texas; he also states that it was error to overrule his objection to the change in hearing officers, questions whether the hearing officer and counsel for respondent (carrier) were meeting prior to the hearing, and states that the medical evidence shows that claimant cannot do any work at all and should be paid SIBS. Carrier only replied to the assertions of inability to work, adding that claimant refused to answer certain questions posed by carrier and left the premises.

DECISION

We reverse--a hearing should be held consistent with the requirements of Section 410.005(a).

The basis for ordering a new hearing is that venue requirements were not satisfied in this case. *See* Texas Workers' Compensation Commission Appeal No. 93900, decided November 18, 1993. As stated in Appeal No. 93900, venue is prescribed by statute.

In the case under review, claimant's counsel, at a hearing on March 10, 1999, represented that the claimant's home is "109.8 miles from this field office" and was "not within 75 miles of the (City 1) field office." The hearing officer then asked if claimant had recently moved, to which, counsel replied, "No, your honor, he has been in the same place. The (City 1) field office has moved." When the hearing officer asked if claimant had stated that venue was proper in the (City 1) field office in prior hearings since his injury, claimant's counsel replied that the (City 1) field office has moved since the last hearing. (The transcript reflects that the hearings in March and May 1999 were held at (claimant's address), (City 1), Texas.) Counsel also indicated that the field office had moved "almost 30 miles." The hearing officer then asked where claimant wanted the hearing moved. Claimant's counsel said that a hearing needed to be held within 75 miles of claimant's home which is in (County 1) County, adding that there is a courthouse in (County 1) County. The hearing officer indicated that good cause could be found to hold the hearing "at any of the field offices." The hearing officer then denied the motion to transfer to (County 1) County, without finding good cause to have the hearing at the (City 1) field office and without finding that the (City 1) field office was within 75 miles of claimant's residence at the time of the injury.

After discussing a question raised as to why the hearing officer for this hearing had been changed from Ms. H to Ms. D, claimant's counsel again raised the point that the hearing should be held within 75 miles of the claimant's home. She referred to a map she had given the hearing officer and stated that claimant had to drive two hours and 45 minutes to get to the (City 1) site, adding that his three prior back operations make that difficult. (The record indicates that one spinal surgery has occurred since the injury in question and two had been performed prior to the injury.) The hearing officer mentioned the possibility of moving the hearing to (City 2) or (City 3) but counsel stated that both are farther from claimant than (City 1). The following exchange then took place:

> THE HEARING OFFICER: Ms. T, are you going to answer my question? Do you wish to have it transferred to (City 2) or (City 3), yes or no?
>
> Ms. T: I'm asking for him to be set within 75 miles of his home.
>
> THE HEARING OFFICER: As Ms. T will not answer my question, I do not find good cause to make any transfer from this office. . . . Therefore I find that the best place to have this hearing is--which is under jurisdictional requirements would be the (City 1) field office.

Discussion continued but it only repeated basically what has been set forth herein. Claimant was not present at this hearing and the hearing was continued to May 11, 1999.

At the May 11, 1999, hearing, held at the same (City 1) office, claimant was present and claimant's counsel stated that claimant would not stipulate to venue and renewed the objection to venue "raised last time at the last hearing." Later in the hearing after claimant had already been cautioned to answer carrier's questions, carrier asked, "do you ever feed the livestock?" When claimant refused to answer that question, his attorney objected that the question was not limited to the filing period in question; that objection was overruled, and claimant said, "I have nothing to say to y'all." He added another comment and left the premises.

Appeal No. 93900, *supra*, said that no evidence supported a finding of fact that the claimant in that case "lived within 75 miles of the (City 1) office of the Texas Workers' Compensation Commission [Commission] on September 23, 1991." (The injury in that case occurred on September 23, 1991.) There is no evidence in the case under review that claimant lived within 75 miles of the (City 1) office of the Commission located at (claimant's address). There was no finding of good cause, and the transcript appears to indicate that venue was determined on the basis of (City 1) being the "best place" in the opinion of the hearing officer. We note that the good cause provision relates to having the hearing at some site other than one within 75 miles of the "claimant's residence at the time of the injury"; it does not relate to transfer of the case from a particular Commission office, regardless of the distance that office is from the residence of claimant at the time of the injury. *See* Section 410.005(a).

A hearing on remand may be held, if necessary, to determine whether claimant's residence now is the same as that at the time of the injury, to determine the distance from the residence at the time of the injury to the current (City 1) office or to any other potential site for a hearing, and, if necessary, to determine the site to hold a hearing in regard to the issue of SIBS for the sixth compensable quarter. If such a hearing on remand is not considered necessary, the date and place (in compliance with Section 410.005(a)) to hear the issue of claimant's entitlement to sixth quarter SIBS may be set without further specific determinations in regard to claimant's residence and the (City 1) office. However, to consider the appeal, on the merits, of the hearings held in (City 1) in March and May 1999, there must be findings of fact addressing the requirements of Section 410.005(a) which place the (City 1) site within those requirements, and the evidence must be sufficient to support those findings. Otherwise, a hearing on the merits at a site in compliance with Section 410.005(a) will develop evidence and will make findings of fact and conclusions of law.

While claimant asserts that the hearing officer was changed from Ms. H to Ms. D "by means or manner unknown," the Appeals Panel has no reason to doubt Ms. D's comment on the record that the case was placed on her docket by "random computer selection," although it was not indicated whether such selection occurs each time there is a continuance.

Pending resolution of the hearing, a final decision has not been made in this case. However, since this reversal necessitates 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.

Joe Sebesta
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Judy L. Stephens
Appeals Judge