

APPEAL NO. 991615

This appeal is brought pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A benefit contested case hearing (BCCH) was held in (City 1) on July 9, 1999. He determined that the respondent (claimant) is entitled to supplemental income benefits (SIBS) for the second quarter. That determination has not been appealed and has become final under the provisions of Section 410.169.

At the BCCH, the attorney representing the claimant stated that it was his impression that a show cause hearing was to be held for the appellant (carrier) to show good cause for not attending a prior BCCH. The hearing officer announced that he would hold such a hearing after the hearing on the merits was completed and did so. Concerning good cause, he made the following findings of fact and conclusions of law:

**FINDINGS OF FACT**

14. Carrier first received notice of the June 23, 1999 setting of the [BCCH] on June 21, 1999.
15. [Ms. S], attorney, did not receive notice of the June 23, 1999 setting of the [BCCH] until fifteen minutes before the hearing was scheduled to commence on June 23, 1999.

**CONCLUSIONS OF LAW**

4. Carrier did not have good cause for its failure to appear at the setting of the [BCCH] on June 23, 1999.
5. [Ms. S], attorney, had good cause for her failure to appear at the setting of the [BCCH] hearing on June 23, 1999.

The carrier appealed Conclusion of Law No. 4; contended that the Texas Workers' Compensation Commission (Commission) did not give proper notice of the BCCH setting on June 23, 1999, and therefore the hearing officer's ruling is improper; and requested that the Appeals Panel reverse Conclusion of Law No. 4. The claimant responded, urged that the hearing officer did not commit error, and that his decision be affirmed.

**DECISION**

We reverse Conclusion of Law No. 4.

The record contains three hearing officer's exhibits. In a standard form letter dated May 18, 1999, the Commission advised the parties that a BCCH was set for June 8, 1999, at 11:15 a.m. In a letter dated June 11, 1999, Ms. S wrote:

As you know, I represent [carrier] in the above referenced matter. The [CCH] in the above referenced matter was scheduled for Tuesday, June 8, 1999 at 11:30 a.m. in the [City 1] Field Office of the [Commission]. On Monday, June 7, 1999, I was advised by [Mr. P] that the [CCH] was being cancelled and would be rescheduled. Today, I received notice that the Hearing was being rescheduled for Friday, June 18, 1999 at 9:00 a.m. I have a conflict with this setting and am not able to attend because I am presently scheduled to attend a court ordered mediation for a case that is scheduled for trial on June 28, 1999. The mediation cannot be rescheduled prior to the trial setting and therefore I am respectfully requesting that the [CCH] be rescheduled.

Please contact my office and advise if the Carrier's request for continuance will be granted. Thank you for your attention to this matter.

A standard letter from the City 1 field office of the Commission to the attorney representing the claimant dated June 18, 1999, shows that copies were sent to the claimant and the carrier at its Austin (City 2) address and states:

The [CCH] previously scheduled for 06/18/1999 at 09:00 AM for the claim and docket number shown above has been rescheduled. The proceeding has been rescheduled to the date, time, and place shown below:

[CCH]:  
DATE: June 23 1999  
TIME: 09:00 AM  
PLACE: [Address and telephone number omitted.]

If you have any questions, please contact the Commission Field Office handling the claim at the address or telephone number shown below.

The carrier had admitted into evidence a standard letter from the City 1 field office of the Commission to Ms. S; indicating that copies were sent to the carrier, the claimant, and the attorney representing the claimant; dated June 25, 1999, advising that the CCH scheduled for June 23, 1999, had been rescheduled for July 9, 1999. The letter contains the same standard language in the letter dated June 18, 1999, set forth earlier in this decision and does not indicate that a show cause hearing will be held.

Chapter 410 of the 1989 Act is entitled ADJUDICATION OF DISPUTES. Section 410.002 provides:

LAW GOVERNING LIABILITY PROCEEDINGS. A proceeding before the commission to determine the liability of an insurance carrier for compensation for an injury or death under this subtitle is governed by this chapter.

Section 410.151(b) provides:

An issue that was not raised at a benefit review conference or that was resolved at a benefit review conference may not be considered unless:

- (1) the parties consent; or
- (2) if the issue was not raised, the commission determines that good cause existed for not raising the issue at the conference.

Section 410.156 provides:

ATTENDANCE REQUIRED; ADMINISTRATIVE VIOLATION.

- (a) Each party shall attend a [CCH].
- (b) A party commits a violation if the party, without good cause as determined by the hearing officer, does not attend a [CCH]. A violation under this subsection is a Class C administrative violation.

Section 415.002(a) provides in part:

An insurance carrier or its representative commits an administrative violation if that person willfully or intentionally: . . . (8) fails, without good cause, to attend a dispute resolution proceeding within the commission.

Section 415.031 states that any person may request the initiation of administrative violation proceedings by filing a written allegation with the director of the Division of Compliance and Practices. Section 415.032 provides that if investigation by the Division of Compliance and Practices indicates that an administrative violation has occurred, the Division of Compliance and Practices shall provide the person written notice of the alleged violation. At the time that the 1989 Act was passed, Section 10.33, that was codified in Section 415.034, provided that the Division of Hearings shall conduct hearings on administrative violations under the provisions of the Administrative Procedure and Texas Register Act (APTRA) (Article 6252-13a, Vernon's Texas Civil Statutes). Such hearings were conducted by APTRA hearing officers assigned to the Commission. Under the current Section 415.034, such hearings are conducted by the State Office of Administrative Hearings. In Texas Workers' Compensation Commission Appeal No. 950044, decided February 21, 1995, the Appeals Panel held that failure of a party to appear at a BCCH without good cause may result in the imposition of an administrative violation but did not preclude the party from presenting evidence at a subsequent hearing attended by the party.

The attorney representing the claimant cited Texas Workers' Compensation Commission Appeal No. 970265, decided March 21, 1997. In Appeal No. 970265, the Appeals Panel cited earlier decisions and stated that there is no requirement in the Commission's rules for service of notice of a continued hearing on the attorney for the

carrier. The Appeals Panel also noted that the carrier was sent a letter advising it to show cause for failure to appear at a BCCH and did not respond. In the case before us, there is nothing in the record to indicate that the carrier was to present evidence concerning good cause for not attending the BCCH set for June 23, 1999, at the BCCH set for July 9, 1999. In its appeal, the carrier presented evidence that was not presented at the BCCH held on July 9, 1999. The carrier was not provided notice of a hearing on good cause for failure to appear and introduced only the set notice for the July 9, 1999, BCCH to show that it was addressed to the attorney representing the carrier. We reverse Conclusion of Law No. 4 that the carrier did not have good cause for its failure to appear at the setting of the BCCH on June 23, 1999, because the carrier was not provided notice that it was to show good cause.

The conclusion that the claimant is entitled to SIBS for the second quarter has not been appealed. A person who thinks that the carrier committed an administrative violation may file a written allegation of an administrative violation with the director of the Division of Compliance and Practices. Under these circumstances, we do not remand for the hearing officer to have the Commission advise the carrier of a hearing on good cause for failing to attend an earlier BCCH, to conduct a hearing, and to render a decision on whether the carrier had good cause for not appearing at the June 23, 1999, BCCH.

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Tommy W. Lueders  
Appeals Judge

CONCUR:

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Stark O. Sanders, Jr.  
Chief Appeals Judge

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Dorian E. Ramirez  
Appeals Judge