

## APPEAL NO. 991747

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on July 20, 1999. With respect to the issues before him, the hearing officer determined that the respondent (claimant) sustained a compensable injury to her left thumb and left shoulder on \_\_\_\_\_; that the claimant timely reported her injury to her employer; that her average weekly wage (AWW) is \$157.20; that she had disability as a result of her compensable injury from February 26, 1999, to May 3, 1999; and that she is not barred from pursuing Texas workers' compensation benefits because of an election to receive benefits under a group health policy. In its appeal, the appellant (carrier) argues that its due process rights, as well as those of the employer, were denied because the carrier was given only seven days notice of the hearing. The carrier also contends that the hearing officer abused his discretion in denying its request for a continuance. Alternatively, the carrier argues that the hearing officer's injury and disability determinations are against the great weight of the evidence. The carrier does not specifically challenge the hearing officer's determinations concerning timely notice, AWW, and election of remedies; however, in its prayer following the due process argument, it states that all five issues are interrelated and requests that the case be remanded for a new hearing on each issue. The appeals file does not contain a response to the carrier's appeal from the claimant.

### DECISION

Reversed and remanded.

In this instance, the benefit review conference (BRC) was held on June 29, 1999. The BRC report states that at the end of the BRC, the parties were not provided a copy of the form setting the date of the hearing "because no dates were available." The BRC report also provides that the parties "were told that a date would be set in [city 1]." The letter forwarding the BRC report to the parties and setting the hearing for July 20, 1999, at 1:30 p.m. in city 1 is dated July 12, 1999. The carrier asserts that it received the notice on July 13, 1999. On July 15, 1999, the carrier filed a "To Whom it May Concern" letter with the (city 2) field office noting that the setting of the hearing had been expedited without the parties having agreed to do so. The carrier stated that it did not "believe it will have sufficient time to fully develop its defenses with such an expedited setting. Therefore, the carrier requests that the [hearing] be rescheduled to a later date that is not an expedited setting." The hearing officer treated the carrier's request as a Motion for a Continuance and denied it on July 16, 1999. The carrier made a second Motion for a Continuance at the hearing, which was also denied by the hearing officer. In making its request, the carrier stated that it received notice of the July 20, 1999, hearing on July 13, 1999, seven days before the hearing. It asserted that the continuance was necessary because the issues presented for the hearing officer's resolution were credibility issues and the carrier was unable to have its two witnesses at the hearing and likewise did not have sufficient time to present the evidence from those witnesses in another form.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 140.3 (Rule 140.3) provides in relevant part that the Texas Workers' Compensation Commission (Commission) "may provide expedited [BRCs ] and [hearings] for resolution of disputes involving

compensability, liability for essential medical treatment, or any type of issue as defined by commission policy for which the executive director or delegate determines an expedited proceeding will serve the best interests of the worker's compensation system or its participants." The rule does not appear to require consent from the parties to expedite. Rule 142.6(a)(2) provides that if the Commission "determines that an expedited setting is appropriate, as provided by § 140.3 of this title," it "shall set" a hearing to be held "not later than 30 days from the date of the [BRC]." Rule 142.6(c) provides that after setting the hearing the Commission "shall furnish notice to the parties, by first class mail or personal delivery, written notice of the hearing." Subsection (3) of Rule 142.6(c) provides that notice of a hearing set under Rule 142.6(b)(2), an expedited setting, "shall be furnished" not later than 10 days before the hearing. While it would have been preferable for the carrier to specifically cite Rule 142.6 in requesting the continuance, its failure to do so does not excuse the Commission's failure to comply with that rule in setting the hearing in this case. It is apparent from the face of the scheduling letter of July 12th that in setting the hearing for July 20th, the Commission did not comply with Rule 142.6(c). Given the Commission's noncompliance with Rule 142.6, the hearing officer abused his discretion in denying the requested continuance. Accordingly, we reverse the hearing officer's decision and order and remand the case for a new hearing on the five issues. In setting the hearing on remand, the requirements of Rule 142.6(c) must be followed and the parties must be given at least the minimally required notice of the hearing. It is unfortunate that the defect in the notice of the hearing could not have been discovered and corrected before the hearing was held; however, concern over duplication of effort and lack of efficiency does not provide a basis to excuse noncompliance with requirements for setting a hearing and providing the parties with notice thereof.

The hearing officer's decision and order are reversed and the case is remanded for a new hearing on the five disputed issues. On remand, the parties must be given notice of the hearing in accordance with Rule 142.6(c). 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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Elaine M. Chaney  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Judy L. Stephens  
Appeals Judge