

APPEAL NO. 991846

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 July 20, 1999. Because the appellant (claimant) did not appear at the CCH, the hearing officer sent him a letter asking him to establish good cause for his nonappearance. The claimant did not reply to this letter. The hearing officer then resolved the disputed issues by determining that the first certification of a date of maximum medical improvement and an impairment rating became final because it was not timely disputed as required by Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)); that the claimant did not have disability; and that the claimant's average weekly wage was \$221.54. In his appeal of the decision and order of the hearing officer, the claimant asserts that he never received notice of the CCH and could not travel to the CCH to prove his case. He also argues that he should prevail on the merits of the disputed issues. The respondent (carrier) replies that the decision is correct and the contentions of the claimant "are unfounded and do not warrant a reversal . . . ."

DECISION

Affirmed.

The claimant had the burden of proof on each of the disputed issues. Because he did not appear at the CCH, no evidence was introduced on his behalf. In her decision and order reached after receiving no response from her letter to the claimant to explain his absence, the hearing officer in Finding of Fact No. 3 found that, although the claimant did not live within 75 miles of the (city 1) field office, "the parties have consented to holding the hearing in the (city 1) Field Office." See Section 410.005(a) which provides that, absent a finding of good cause, a benefit review conference (BRC) or CCH "may not be conducted at a site more than 75 miles from the claimant's residence at the time of the injury." We infer that this finding was tantamount to a finding of good cause to hold the CCH in (city 1). The hearing officer further found in Finding of Fact No. 4 that the claimant "was properly notified that the Benefit [CCH] was scheduled for July 20, 1999, and he did not attend the hearing."

The claimant appeals Finding of Fact No. 4 and asserts that he never received notice of the CCH set for July 20, 1999. A review of the Dispute Resolution Information System (DRIS) Contact Data notes reflects that on February 5, 1999, the claimant called the (city 1) field office to say that he moved to (city 2). The claimant attended a BRC in (city 1) on April 7, 1999. The report of this BRC with attached interlocutory order for the payment of temporary income benefits was sent to the (city 2) address. According to an April 28, 1999, DRIS note, the claimant's address in (city 2) was confirmed. A CCH was set for May 21, 1999. The carrier requested and was granted a continuance to June 18, 1999. The claimant requested and was granted a continuance from June 18, 1999, to July 20, 1999. On June 16, 1999, a copy of the order granting the claimant's request was sent by the docket clerk to the claimant at the (city 2) address. The hearing officer's July 21, 1999,

letter to the claimant asking if he had good cause for not attending the July 20, 1999, CCH was also sent to the (city 2) address.

The hearing officer signed her decision and order on August 4, 1999, and it was forwarded to the claimant by the Texas Workers' Compensation Commission (Commission) by cover letter of August 6, 1999, to the (city 2) address.

The DRIS notes further reflect that on August 16, 1999, the claimant called the (city 1) field office and gave a (city 3) address. He called the (city 3) field office on August 20, 1999, to ask if his file was transferred to that office and, according to the DRIS note, was told that his file was transferred. The claimant telefaxed his appeal of the decision and order from the (city 3) field office on August 24, 1999.

Though not listed as an exhibit, the appeals file contains a copy of the order granting the continuance to July 20, 1999, and a transmittal of this order to the claimant. See Texas Workers' Compensation Commission Appeal No. 92237, decided July 22, 1992. As noted above, the claimant asserted on appeal that he never received notice of the July 20, 1999, CCH and, presumably, though he did not expressly make this argument on appeal, that he did not receive the hearing officer's letter of July 21, 1999. The reason given was that he was then living in (city 3). Pursuant to Rule 102.5(h), communications from the Commission are deemed received no later than five days after they are mailed. The evidence available to us establishes that the Commission sent the notice of the July 20, 1999, CCH to the address provided by the claimant and that the claimant only gave the Commission a different address after the notice of the CCH, the good cause letter, and the decision and order were sent to the (city 2) address.<sup>1</sup> Rule 102.4(a) provides that notices "shall be mailed to the last address supplied . . . ." Thus, any problem experienced by the claimant with notices not being mailed to the (city 3) address are attributable to the failure of the claimant to keep the Commission informed of his current address.

Because the claimant, without good cause, failed to appear or present evidence at the CCH, he did not meet his burden of proof on the disputed issues.

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<sup>1</sup>It was unclear how the claimant received the decision and order sent to the (city 2) address and timely appealed.

For the foregoing reasons, we affirm the decision and order of the hearing officer.

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Alan C. Ernst  
Appeals Judge

CONCUR:

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Tommy W. Lueders  
Appeals Judge

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Elaine M. Chaney  
Appeals Judge