APPEAL NO. 991980

This appeal arises pursuant to the Texas Workers' Compensation Act of 1989, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On August 10, 1999, the hearing officer provided a Decision and Order on Remand after Texas Workers' Compensation Commission Appeal No. 991223, decided July 21, 1999, had remanded an earlier decision signed by the hearing officer on May 12, 1999, in which supplemental income benefits (SIBS) were denied. The case was remanded to satisfy the venue requirements of Section 410.005(a), which says a contested case hearing (CCH) may not be conducted at a "site" more than 75 miles from a claimant's residence at the time of the injury unless good cause exists for selection of a different location; the Appeals Panel deferred review of the merits until the requirements of Section 410.005(a) were satisfied. No hearing was held on remand. In the Decision and Order on Remand, the hearing officer addressed the SIBS issue by repeating the same findings of fact as had been made in the initial decision. Appellant (claimant) asserts that the plain language of the statute requires a hearing within 75 miles of his residence at the time of injury; he states that good cause is not shown by simply stating that a field office had been closed. He also states that SIBS should be awarded. Respondent (carrier) replied that the decision should be affirmed.

DECISION

We reverse, and render that NO DECISION has been made in regard to the issue of SIBS for the sixth compensable quarter since no hearing was conducted in compliance with venue requirements.

At the initial hearing there was no stipulation by the parties that the (field office) field office satisfied venue requirements. There was no finding of fact or reference in the Statement of Evidence to the distance involved from claimant's residence at the time of injury to the current (field office) field office. The initial decision asserted that "venue is proper" in the (field office) field office; these words appeared in a finding of fact and in the Statement of Evidence. The record of that hearing indicated that claimant's counsel had represented that the distance involved was 109.8 miles, but no evidence was developed through the use of a map or testimony. There also was no reference to good cause in the initial decision. At the initial hearing claimant objected to the conduct of the hearing at the (field office) field office and also asserted in his appeal that venue was not met.

On remand the hearing officer held no hearing but found:

> No commission [Texas Workers' Compensation Commission] office presently lies within 75 miles of claimant's residence at the time of injury.
>
> The (field office) field office . . . is the closest existing Commission office to claimant's residence.

> Good cause exists to hold the hearing at the Commission's (field office) field office located at . . . as the old location of the (field office) field office . . . no longer exists.

Other findings of fact regarding SIBS were the same as set forth after the initial hearing. No SIBS were awarded.

Section 410.005(a) states that the hearing is to be conducted at a "site" not more than 75 miles from claimant's residence at the time of the injury. While no Commission rule addresses venue in regard to the CCH, Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 141.1(f) (Rule 141.1(f)), in addressing benefit review conferences, appears to basically recite the language of the statute in saying that a conference "will" be conducted at a "site" no more than 75 miles from claimant's residence at the time of the injury; the rule did not choose to restrict the broad term "site" by substituting words such as "commission office," but it did use the perhaps more mandatory term "will" rather than "may not" when it changed the emphasis to what "will" be done as opposed to the statutory phrasing of what "may not" be done.

With a finding of fact that the (field office) field office is not within 75 miles of claimant's residence at the time of the injury, the finding of fact that the (field office) field office is the closest Commission office does not address Section 410.005(a). The statute does not require that a hearing be conducted at the closest Commission office, but that the hearing be conducted at a site no more than 75 miles from the claimant's residence at the time of the injury.

Good cause may be a factor in Section 410.005(a). Good cause regarding venue has been found by hearing officers in instances in which a claimant presently lives within 75 miles of a site, although his residence was not within 75 miles of that site at the time of the injury, when the claimant does not object to the site. The only good cause set forth in the Decision and Order on Remand, both in a finding of fact and in the Statement of Evidence, was that the prior location of the field office in (field office) no longer exists. As stated, the statute does not consider which Commission office is closest. We observe that if good cause could be sufficiently supported by finding that a particular Commission office was closest (but not within 75 miles), then the Commission could meet the statutory requirements of Section 410.005(a) with significantly fewer field offices than it now has. The determination that good cause existed to hold the CCH at the (field office) field office, which the hearing officer found was over 75 miles from the claimant's residence at the time of the injury, was an abuse of discretion in this case in which claimant strenuously objected to holding the hearing at that location. We see no facts developed indicating that there are no governmental or other offices which could be used for a hearing room within 75 miles of claimant's residence at the time of the injury; such a fact could conceivably constitute a basis for a finding of good cause. The hearing officer states that a statute should be given its plain meaning unless ambiguous; common sense, and consequences that would follow the construction of a statute, were also mentioned, along with "absurd results." We do not

argue with these principles, but we do not conclude that Section 410.005(a) is not plain (or that it is ambiguous) in calling for a 75-mile limit; we do not conclude that common sense requires a claimant with three back surgeries to travel almost 50% farther than the maximum distance specified by the legislature even though, as a consequence, a Commission employee may have to travel in order to conduct a hearing. We do not believe it absurd that a hearing be conducted in other than a Texas Workers' Compensation Commission field office. The finding of fact that said good cause exists to hold the hearing at the current (field office) field office because the "old location . . . no longer exists" is reversed.

There having been no CCH conducted within the requirements of Section 410.005(a), NO DECISION has been made in this case. The Appeals Panel is limited to only one remand, which has been used. *See* Section 410.203(c). The Commission may take whatever steps necessary to assure that the issue of sixth quarter SIBS for this claimant is adjudicated consistently with the requirements of the 1989 Act.

_____
Joe Sebesta
Appeals Judge

CONCUR:

_____
Gary L. Kilgore
Appeals Judge

_____
Judy L. Stephens
Appeals Judge