

APPEAL NO. 000135

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 set and convened on October 22, 1999, and reset and convened on December 28, 1999. The single issue at the CCH was whether the appellant (claimant) sustained a compensable injury. The claimant did not appear at either CCH session and the hearing officer determined the claimant did not sustain a compensable injury. Claimant filed correspondence dated January 21, 2000, asking that an appeal be granted indicating he had shown medical records to the Texas Workers' Compensation Commission repeatedly; that he did attend the CCH on October 22, 1999; that at the time of the last hearing he did not have all his records; and that at no time after "my accident, radiation exposure" did his employer or the hospital contact him about the exposure. The respondent (carrier) argues that there was no abuse of discretion in the hearing officer rendering a decision after the failure of claimant to appear on two separate occasions and after being sent a "10 day" letter, and asks that the decision be affirmed.

DECISION

Affirmed.

The CCH was originally set for hearing on October 22, 1999, and the transcript of that date shows that the CCH was convened and that the claimant failed to appear. The transcript shows that when the hearing officer made inquiry of the ombudsman who was to assist the claimant, and was asked if she had assisted the claimant at the benefit review conference (BRC), the following response was given:

Yes, your honor. And he has had two appointments scheduled since the [BRC] and has not shown for either one. My assistant did call and—and leave a message with his wife, I believe, regarding the second appointment, and she said that they were aware that he did not show.

The hearing officer indicated he would send a letter to the claimant and give him 10 days to respond regarding good cause for not appearing and that he would reschedule the CCH. In evidence is a copy of the October 22, 1999, letter to the claimant advising him he could request a recovering of the hearing and present evidence on the issue and on good cause for failing to appear. The CCH was subsequently reconvened on December 28, 1999, and the claimant again failed to appear. The ombudsman indicated she had not heard from the claimant on that day and when asked if there was any explanation, she replied:

No, your Honor. He did show up for a prep this time, and we went over what would be expected, for him to be here by 9:30, that there would be a to-show cause hearing prior. As far as I was aware, he planned on being here.

No evidence was presented on the merits of the issue referred from the BRC and the hearing officer, stating that the claimant had the burden of proof, issued his decision and order.

Although the claimant states in his correspondence of January 21, 2000, that he attended the October 22, 1999, hearing, the official record clearly shows otherwise. It is also clear that claimant was sent a letter on October 22, 1999, advising him as indicated above, and that the CCH was rescheduled for December 28, 1999, which was known by the claimant. With the second failure to appear and no indication of good cause for failing to appear, the hearing officer appropriately issued a decision and order. We do not find any abuse of discretion on the part of the hearing officer and find no basis for disturbing his decision and order under these circumstances. Texas Workers' Compensation Appeal No. 991155, decided July 15, 1999 (Unpublished); Texas Workers' Compensation Commission Appeal No. 991453, decided August 18, 1999; Texas Workers' Compensation Commission Appeal No. 971530, decided September 18, 1997. The decision and order of the hearing officer are affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Tommy W. Lueders
Appeals Judge