

APPEAL NO. 000751

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 convened on November 2, 1999, with (Hearing Officer 1). The appellant (claimant) did not appear at that CCH. The CCH was reset and convened on January 18, 2000,, with (Hearing Officer 2). The claimant did not appear at that session of the CCH. Another session of the CCH was convened on March 14, 2000, and the claimant did not appear at that session. The ombudsman who had met with the claimant was present and did not offer any evidence on behalf of the claimant. An attorney representing the carrier was present and did not offer any evidence. Hearing Officer 2 determined that the daimant is not entitled to supplemental income benefits (SIBs) for the 13th quarter. The claimant appealed; stated that he did not attend the first session of the CCH because he had a flat tire on the way to the CCH, did not attend the second session because he thought it was scheduled for the afternoon but instead it was scheduled for the morning, and did not attend the last session because he was in jail for 24 hours; contended that he has evidence sufficient to establish that he is entitled to SIBs for the 13th quarter; and requested that he be given one more chance to prove that he is entitled to SIBs for the 13th quarter. The respondent (carrier) replied, urged that Hearing Officer 2 did not err in determining that the claimant is not entitled to SIBs for the 13th quarter without setting another session of the CCH, and requested that her decision be affirmed.

DECISION

We affirm.

A benefit review conference (BRC) was held on September 24, 1999. The report of the BRC indicates that the dispute centered on whether the claimant had some ability to work during the qualifying period, that at the BRC the carrier did not present any evidence of a change in the claimant-s medical condition from the prior 12 quarters, and that the benefit review officer issued an interlocutory order directing the carrier to pay the claimant SIBs for the 13th quarter.

On November 2, 1999, Hearing Officer 1 sent a letter to the claimant, advising him that he had 10 days from receipt of the letter to request that the CCH be reconvened to permit him to show good cause for failing to attend the CCH and to present evidence on the disputed issue. The record does not contain a response from the claimant but does contain a letter dated November 22, 1999, advising the claimant and other interested persons that the CCH was rescheduled to convene on January 18, 2000, at 9:00 a.m. The record of the CCH convened on January 18, 2000, contains a statement by Hearing Officer 2 that the claimant was not present and a statement by the ombudsman that she had met with the claimant and he was aware of the scheduled CCH. The record does not contain a document showing that the CCH was rescheduled for March 14, 2000. However, the record of the session convened on March 14, 2000, does contain a statement of the ombudsman that the claimant was aware of the scheduled CCH and was to meet with her 30 minutes before the scheduled start of the

CCH. The carrier requested that the record be closed and that Hearing Officer 2 render a decision. She closed the CCH and rendered a decision that the claimant failed to appear and that he is not entitled to SIBs for the 13th quarter.

The claimant was provided two opportunities to present good cause for not attending a CCH and three opportunities to present evidence on entitlement to SIBs for the 13th quarter. He did not do so. The hearing officer did not abuse her discretion in rendering a decision after the third scheduled session of the CCH without providing the claimant another opportunity to show good cause for not attending the CCH and to present evidence on entitlement to SIBs for the 13th quarter.

We affirm the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Gary L. Kilgore
Appeals Judge