

APPEAL NO. 001977

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 August 14, 2000. The issues at the CCH were whether the claimant was entitled to supplemental income benefits (SIBs) for the 4th quarter from March 2, 2000, through May 31, 2000, and what, if any, were the claimant's wages earned during the qualifying period for the 4th quarter. The hearing officer noted that the claimant failed to appear for the CCH. He determined that the claimant was not entitled to SIBs for the 4th quarter, that the claimant earned income exceeding 80% of his preinjury average weekly wage during the 4th quarter qualifying period.

DECISION

Affirmed.

A benefit review conference (BRC) was held on March 28, 2000, and the issues reported out of that BRC were:

- 1) Is the claimant entitled to supplemental income benefits for the 4th quarter from March 2, 2000 through May 31, 2000?
- 2) What, if any, were the claimant's wages earned during the qualifying period for the 4th quarter?

A CCH was scheduled on the foregoing issues for April 21, 2000, and notice of the CCH was sent to the claimant at (address). The matter was continued to June 27, 2000, at 9:00 a.m. in the Field Office of the Texas Workers' Compensation Commission (Commission). Notice of the new date for the CCH was mailed by the Commission to the claimant at (address). The claimant failed to appear at the CCH set for June 27, 2000. At this hearing the self-insured's attorney filed a motion arguing that the claimant's impairment rating (IR) was 9% as determined at an earlier hearing which became final by operation of law; therefore the claimant was not entitled to SIBs for the 4th quarter as a matter of law. The hearing officer took the motion under advisement and sent the claimant a notice to show cause letter to the same address at (address), which stated in relevant part:

The CCH scheduled for June 27, 2000, at 9:00 a.m. was held. The Commission's record indicates that notice of the date, time and place of the hearing was mailed to you at your address of record on April 24, 2000. You did not appear at the hearing, nor did you contact the Commission of your intentions with regard to such. The hearing record was opened, developed, and closed; a proposed decision and order based on the hearing record has been prepared that may be adverse to you. You should contact this Commission office within ten (10) days of receipt of this letter to request that

the hearing be reconvened to show “**GOOD CAUSE**” why you failed to attend and to permit you to present evidence on the issue(s).

On June 29, 2000, the claimant called the Commission in response to the notice to show cause letter and requested that he be given the opportunity to show cause why he was not present at the June 27, 2000, hearing and that he be allowed to present evidence. He verified that his address on record with the Commission was correct. An order allowing the claimant to show cause was signed by the hearing officer on July 5, 2000. The show-cause hearing and CCH were set for 1:30 p.m. on August 14, 2000, in the Field Office. Notice of the show-cause hearing and the CCH set for August 14, 2000 was sent to the claimant at his address listed with the Commission, specifically, (address), which the claimant on June 29, 2000, had verified as correct. On August 14, 2000, the claimant did not appear at the show-cause hearing or CCH to give evidence as to why he did not appear at the June 27, 2000, CCH.

At the CCH on August 14, 2000, the hearing officer noted that he had reset the hearing at the claimant’s request and found that the claimant did not have good cause for his failure to appear at the prior hearing. We believe the reference to the date of April 21, 2000, in the decision and order to be in the form of a typographical error in lieu of June 27, 2000. The carrier re-urged its motion to dismiss on the basis that the claimant was not entitled to SIBs because he only had a 9% IR. The hearing officer took official notice of the decision and order in Docket No. 96-071244-07; the appeal; and the disposition of the appeal as contained in the Commission’s electronic records (DRPS/DRIS). A copy of the decision and order of the hearing officer dated August 17, 2000, and of the letter from the Appeals Panel dated June 1, 2000, were admitted as Hearing Officer Exhibit No. 2.

Based upon the record adduced at the CCH, the hearing officer found that the claimant had a 9% IR that became final by operation of law which “essentially moots the issues presented” and required a finding that the claimant was not entitled to SIBs for the 4th quarter. No further notice-to-show-cause letter was sent to the claimant and the hearing was closed on August 14, 2000.

According to Commission records, a decision and order were entered by the hearing officer in Docket No. _____ in which he determined that the claimant’s IR was 9%. The decision and order were appealed to the Appeals Panel. By letter dated June 1, 2000, the Director of Hearings notified the parties that a written decision from the Appeals Panel had not been issued by the 30th day after the response was filed with the Appeals Panel. Therefore, the decision and order of the hearing officer became the decision of the Appeals Panel which, in turn, became final by operation of law. Section 410.204(c). There was no showing at either the June 27, 2000, hearing or the August 14, 2000, hearing that the claimant filed suit in district court to dispute the final decision of the Appeals Panel. Section 410.205(a) provides that a decision of the appeals panel regarding benefits is final in the absence of a timely appeal for judicial review.

The claimant does not contend that he did not receive notice of the show-cause hearing and CCH set for August 14, 2000, and gives no explanation as to why he failed to attend; nor does he contend that he appealed the 9% impairment rating to district court. The claimant had the burden of proving that he was entitled to SIBs for the 4th quarter and failed to sustain this burden. Under the facts of this case, the hearing officer properly closed the hearing and rendered a decision based on the facts available to him.

We affirm the hearing officer's decision and order.

Kathleen C. Decker
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Gary L. Kilgore
Appeals Judge