

APPEAL NO. 002227

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 May 3, 2000. The issues at the CCH were injury, disability, and timely notice to the employer. The appellant (claimant) was represented at the beginning of the CCH by Mr. R, who announced at the CCH that he had been discharged by the claimant. Although the respondent (self-insured) objected to the granting of a continuance, the hearing officer granted a continuance for the claimant to hire an attorney or meet with an ombudsman. She told the claimant at that time that she would grant a continuance, but that she was not going to have the case reset again. The CCH was continued until June 28, 2000, at 9:00 a.m., as shown on the Order on Request for Continuance sent to the claimant. The CCH was held on June 28, 2000, and the claimant did not appear. A Texas Workers' Compensation Commission ombudsman at that CCH indicated that the claimant did not appear for an appointment with an ombudsman, gave his current address (which was the same one to which the notices were sent and the same one shown as the claimant's return address on the envelope which contained a copy of part of his appeal), and said that the claimant had hired or was hiring an attorney. The hearing officer admitted certain self-insured's exhibits, admitted the benefit review conference report and the notice of reset, and indicated that she would send a 10-day letter to the claimant. The claimant responded to the 10-day letter, and, on July 13, 2000, the hearing officer issued an Order on Request for Show Cause Hearing, stating that a show cause hearing was scheduled immediately preceding the CCH scheduled for August 30, 2000, at 9:00 a.m., with the claimant being instructed to bring written documentation of hospitalization or doctor's visits, if any. The claimant again failed to appear at the CCH on August 30, 2000. The claimant's ombudsman stated that he had met with the claimant on August 18 to prepare for the CCH "this morning" and did inform him of the purpose of being there that day. He also said he had called the claimant that morning (August 30) and "someone answered the phone that had been asleep and did not know the whereabouts of [the claimant]."

The hearing officer determined that the claimant did not sustain a compensable injury on _____; that the claimant did not sustain disability due to the claimed injury; that the self-insured is relieved of liability because of the claimant's failure to notify his employer of the claimed injury; and that the claimant did not establish good cause for not appearing at the CCH scheduled for June 29, 2000 (sic, should be June 28), or the CCH scheduled for August 30, 2000. The hearing officer noted that the 10-day letter was sent on June 29, 2000, to the claimant's last known address as well as to an address the self-insured had recently received from the claimant. The claimant appeals, stating that his ombudsman said the CCH was at 3:00 p.m. August 30, 2000, and that he was there at 3:00 p.m. The appeal file contains no response from the self-insured.

DECISION

We affirm.

After the claimant failed to appear at the CCH on June 28, 2000, the hearing officer properly sent a 10-day letter, to which the claimant responded, and the hearing officer set a show cause hearing for August 30, 2000, notifying the claimant in writing of the date and time of that hearing and the related CCH. The claimant's ombudsman did appear at the show cause hearing and did not indicate any possible misunderstanding about the time of the hearing. The hearing officer then received further evidence, closed the CCH, and issued her decision. The claimant had the burden of proving that he sustained a compensable injury and had disability. The hearing officer followed the process outlined in previous cases for handling a situation such as this one. See Texas Workers' Compensation Commission Appeal No. 990028, decided February 22, 1999, and Appeals Panel decisions cited in that decision.

The decision and the order of the hearing officer are affirmed.

Tommy W. Lueders
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Kathleen C. Decker
Appeals Judge