

APPEAL NO. 002933

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On October 16, 2000, a hearing was held in (city 1), Texas, with (hearing officer 1) presiding. On December 5, 2000, (hearing officer 2) issued a decision and order which stated that the hearing of October 16, 2000, was closed on November 1, 2000; that the appellant (claimant) had not contacted the city 1 field office of the Texas Worker's Compensation Commission (Commission) within 10 days of the date of a letter sent to the claimant stating that the hearing had been convened on October 16, 2000; and that because the claimant had failed to appear and pursue his claim, the claimant was not entitled to benefits under the 1989 Act. The claimant appealed, requesting that the matter be reversed and remanded for further proceedings. The respondent (carrier) responded, requesting that hearing officer 2's decision be affirmed if the record contains a "ten-day letter" as indicated in the decision and order.

DECISION

We reverse and remand.

It is undisputed that the claimant did not appear on October 16, 2000, but that he did call hearing officer 1 one minute after she announced on the record that she intended to "reset the case" for 10 days or more in order to allow the claimant to show good cause for his failure to appear. It is also undisputed that, as stated by the carrier in its response, that "all individuals present agreed that rather than waiting an additional amount of time for the Claimant to appear that the proceedings would be adjourned."

Dispute resolution proceedings under the 1989 Act are not bound by formal rules of pleading. We find it inapposite to the intent of the 1989 Act to require a claimant who has contacted the Commission within minutes of failing to appear for a hearing to be required to contact the Commission a second time, after receiving a "ten-day letter," to request an opportunity to appear and present evidence in support of his claim when "all individuals present [including the claimant's lay representative] agreed that rather than waiting an additional amount of time for the Claimant to appear that the proceedings would be adjourned."

Hearing officer 2's finding that the claimant failed to pursue his claim is against the great weight of the evidence. The claimant became lost on his way to the Commission field office, and called to advise hearing officer 1 that he was on his way. The hearing was delayed but not ignored by the claimant. The posture of this case; the change in hearing officers; and the issuance of a 10-day letter despite the claimant's call and the agreement to adjourn, rather than to wait for the claimant to arrive, invited error. If we were to believe that hearing officer 2 slavishly required that the claimant reply to the 10-day letter or lose his opportunity to be heard rather than that hearing officer 2's decision was the result of an inadvertent error. we could not countenance such form over substance, as the carrier, would have us do.

The decision and order of hearing officer 2 is reversed and this matter is remanded to the hearing officer for a full hearing on the merits, including a hearing on whether the claimant had good cause for his failure to appear on October 16, 2000.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's Division of Hearings, pursuant to Section 410.202. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

Kenneth A. Huchton
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Robert W. Potts
Appeals Judge