

APPEAL NO. 011138  
FILED JUNE 27, 2001

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 March 12, 2001, and reset and convened on May 7, 2001. The first hearing was recessed because the appellant (claimant) did not appear, although her attorney was present. An appropriate show-cause letter for this failure to appear was sent to the claimant, and Hearing Officer Exhibit Nos. 5 and 6 together reflect that the claimant received the show-cause letter, as well as the notice of the rescheduled CCH (Hearing Officer Exhibit No. 7). Upon reconvening of the CCH on May 7, 2001, after waiting an hour past the scheduled 8:30 a.m. starting time, the claimant and her attorney both failed to appear. At the first hearing, the respondent (carrier) was represented by an attorney; at the second hearing, the carrier was represented by an adjuster. There was no evidence presented at the hearing on behalf of the claimant. The hearing officer added an issue of whether the claimant had good cause for failing to appear at the scheduled CCH on March 12, 2001, and proceeded to issue a decision and order in which he determined that the claimant did not have good cause for failing to appear. The claimant has appealed the determination of no good cause for failing to appear and has also appealed the adverse determination of the hearing officer on the disability issue. The carrier has responded, and requests that the hearing officer's decision be affirmed.

DECISION

Affirmed.

After the claimant failed to appear at the first CCH on March 12, 2001, the hearing officer properly sent a 10-day letter, to which the claimant responded (see Hearing Officer Exhibit No. 6). A second CCH was scheduled for May 7, 2001. Hearing Officer Exhibit No. 6 shows that the claimant was aware of the time and place of the second CCH, and neither the claimant nor her attorney attended that hearing. The claimant's appeal contains the statement that "Claimant had good cause for failing to appear at the scheduled Benefit [CCH] on March 12, 2001 and May 7, 2001. Claimant was too ill to appear and her attorney did not receive notice of the hearing." As to this statement, we note first that the hearing officer only determined the issue of whether there was good cause for failing to attend the March 12 CCH. There was no decision with regard to failure to attend the May 7 CCH. Second, the evidence contained in Hearing Officer Exhibit No. 6 is that the claimant called in to say that she did not receive notice of the March 12 CCH (Entry 54) and the attorney was in fact present at the March 12 CCH. In determining whether there was an abuse of discretion by the hearing officer in making this decision, we look to see if the hearing officer acted without reference to any guiding rules or principles. Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986). We do not find any abuse of discretion on the part of the hearing officer in determining that there was no good cause shown for the claimant's failure to appear at the March 12 CCH.

The claimant had two opportunities to present her case and she did not avail herself of either opportunity to do so. The hearing officer followed the process outlined for handling cases where parties fail to appear at the hearing. See Texas Workers' Compensation Commission Appeal No. 990028, decided February 22, 1999, and the decisions cited therein. Accordingly, we conclude that the hearing officer properly closed the record on May 7, 2001, after the second failure of the claimant to appear at the hearing. The claimant had the burden of proving that she had disability. As the claimant presented no evidence, the hearing officer properly determined that the claimant did not sustain that burden.

The decision and order of the hearing officer are affirmed.

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Elaine M. Chaney  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Philip F. O'Neill  
Appeals Judge