APPEAL NO. 011507
FILED AUGUST 15, 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 was held on June 5, 2001. The hearing officer determined that the respondent (claimant) did have good cause for failing to attend required medical examinations (RME) with Dr. B on December 7, 1999, and April 19, 2000, and that the claimant was entitled to temporary income benefits (TIBs) for the period from May 8, 2000, through June 9, 2000. The appellant (carrier) has appealed on sufficiency of the evidence grounds. The claimant did not submit a response to the appeal.

DECISION

Affirmed.

We note first that the hearing officer made several administrative errors in setting forth dates. The following corrections are made:

In the issue statement on page 1 of the Decision and Order, the date 5-18-00 is corrected to 5-8-00.

In Finding of Fact Nos. 5, 6, and 7, the date 4/4/00 is corrected to 4/19/00.

In Conclusion of Law No. 5, the date 5-18-00 is corrected to 5-8-00.

In the Decision section, the date 5-18-00 is corrected to 5-8-00.

The hearing officer was presented with testimony from the claimant that the claimant never received notice of two RMEs, scheduled for December 7, 1999, and April 19, 2000. Claimant's Exhibit Nos. 5 and 6 are letters addressed to the claimant's attorney, which both contain the following statement in bold type: **This letter is NOT being mailed to your client so you are responsible for informing him/her of this appointment.** The hearing officer cited Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 126.6(b) (Rule 126.6(b)), which reads in pertinent part: "All examinations ordered must be scheduled as soon as possible, with at least 10 days **notice to the employee and the employee's representative**." (Emphasis added.) Applying this rule to the facts, the hearing officer determined that the carrier had failed to provide proper notice of the scheduling of the RMEs to the claimant, and that the claimant therefore had good cause for not attending the RMEs. This factual determination is supported by the evidence and the hearing officer correctly applied the appropriate rule. The determination that the claimant is entitled to TIBs for the period of May 8, 2000, through June 9, 2000, is likewise supported by the evidence. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given the evidence. We will reverse a factual determination of a hearing officer only if that determination is so against the great weight and

preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard of review to the record of this case, we decline to substitute our opinion of the evidence for that of the hearing officer.

We affirm the decision and order of the hearing officer, with corrections to dates as noted above.

Michael B. McShane
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert E. Lang
Appeals Panel
Manager/Judge