

APPEAL NO. 012095
FILED OCTOBER 11, 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 began on June 6, 2001. Pursuant to the request of the respondent (carrier) two issues were added, and the appellant (claimant) requested and was granted a continuance of the hearing. A second session of the hearing convened on July 25, 2001; however, the claimant failed to appear at that hearing. The hearing officer sent a 10-day letter to the claimant asking him to show cause for his failure to appear and offering him the ability to present evidence. The hearing officer closed the record on August 9, 2001, noting that the claimant had failed to respond to the 10-day letter as of that date. With respect to the issues before him, the hearing officer determined that good cause did not exist to relieve the claimant from the effects of the agreement signed on December 20, 2000. Additionally, the hearing officer determined that the claimant does not have right carpal tunnel syndrome (CTS); that his _____, compensable injury did not extend to and include right CTS; and that he did not have disability as a result of his _____, compensable injury. In his appeal, the claimant disputes the hearing officer's extent-of-injury and disability determinations on sufficiency grounds. The claimant also appeals the determination that he did not respond to the 10-day letter and attaches an affidavit to his appeal asserting that he did respond to the 10-day letter. In its response, the carrier urges affirmance.

DECISION

Reversed and remanded.

This case is remanded for the purpose of obtaining compliance with HB2600, which amended Section 410.164, effective June 17, 2001. Section 410.164 was amended by the addition of subsection (c), which provides as follows:

At each [hearing], as applicable, the insurance carrier shall file with the hearing officer and shall deliver to the claimant a single document stating the true corporate name of the insurance carrier and the name and address of the insurance carrier's registered agent for service of process. The document is part of the record of the [hearing].

The procedure to be used for implementing the statutory amendment is contained in the June 19, 2001, Texas Workers' Compensation Commission (Commission) memorandum to hearing officers entitled "Required Insurance Carrier Information." A rehearing on remand is required to obtain the required information from the carrier and to admit it into evidence.

On remand, the hearing officer should also reconsider the issue of whether the claimant responded to the 10-day show cause letter sent to him on July 25, 2001. In his decision and order, the hearing officer wrote that the claimant had not responded to the 10-

day letter by August 9, some 15 days after the letter was mailed to the claimant. In the affidavit attached to his appeal, the claimant swears that he timely responded to the letter. On remand, the hearing officer should resolve the factual question of whether the claimant timely responded to the 10-day letter. If the hearing officer determines that the claimant properly responded to the 10-day letter, he should hold another hearing to provide the claimant an opportunity to present evidence. However, if the hearing officer determines that the claimant did not properly respond to the letter, the hearing officer need only procure the required carrier information and reissue his decision and order.

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 working days after the date on which such new decision is received from the Commission's Division of Hearings, pursuant to Section 410.202 (amended June 17, 2001). Saturdays, Sundays, and holidays listed in Section 662.003(a) of the Government Code are not included in the computation of the 15-day appeal and response periods.

Elaine M. Chaney
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Gary L. Kilgore
Appeals Judge