

APPEAL NO. 012341
FILED NOVEMBER 8, 2001

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). There was no contested case hearing (CCH) held in this case. A CCH was scheduled for September 21, 2001. On September 4, 2001, the hearing officer received a letter signed with the appellant's (claimant) name and dated August 30, 2001. The letter is attached to the file as Hearing Officer's Exhibit No. 3, and it requests that the CCH scheduled for September 21, 2001, be canceled. The hearing officer "closed the record on September 4, 2001, **canceled the benefit [CCH] scheduled for September 21, 2001**, and issued this decision and order." (Emphasis added.) The claimant has appealed, stating that "[m]y letter to the [Texas Workers' Compensation] Commission was for cancellation, not a decision, therefore I was not represented at all nor did my ombudsman tell me a decision would be made. Otherwise, I would have been there." The respondent (carrier) has replied, and argues that the claimant's request for review should not be considered because the claimant voluntarily and knowingly chose not to pursue her claim. The carrier further argues that the claimant's appeal should be denied, and objects to "testimonial evidence" from the claimant in her appeal which is new evidence that may not be considered on appeal.

DECISION

We reverse the purported Decision and Order of the hearing officer and render a decision that the hearing officer did not have jurisdiction to issue a Decision and Order in this case.

Sections 410.151 through 410.169 are the provisions of the 1989 Act which apply to the conduct of CCHs. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.1 (Rule 142.1) through Rule 142.20 set out the procedures to be followed during a CCH. The hearing officer is guided by those provisions in conducting a hearing, and, under the rules, also has the authority to recess, postpone, or dismiss a hearing (Rule 142.2(13)). The action of this hearing officer in canceling the CCH is most analogous to dismissing the hearing, and we hold that that is what he did. Once the hearing officer dismissed the hearing, he was without authority to render a Decision and Order. The purported Decision and Order in this case are a nullity.

Michael B. McShane
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Susan M. Kelley
Appeals Judge