

APPEAL NO. 012599
FILED DECEMBER 13, 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 September 18, 2001, with the record closing on October 2, 2001. The appellant (claimant) did not appear at the hearing. The claimant also did not respond to a "show cause" letter offering her an opportunity to establish good cause for her failure to appear at the hearing and to present evidence on the disputed issue. Accordingly, the hearing officer closed the record and determined that the claimant is not entitled to supplemental income benefits (SIBs) for the third quarter and that she did not have good cause for failing to appear at the hearing. On appeal, the claimant contends that her failure to attend the hearing resulted from a misunderstanding and requests that another hearing be scheduled. The respondent (carrier) urges affirmance.

DECISION

Affirmed.

In a letter dated September 18, 2001, the hearing officer advised the claimant that the record in her case would remain open until October 2, 2001, at which time a decision and order would be entered in the case unless the claimant contacted the Texas Workers' Compensation Commission (Commission) to request the hearing be reconvened. The claimant contends in her appeal that she did not appear at the hearing because a Commission employee advised her to disregard the hearing because she already had an appointment at a local Commission office on September 21, 2001. Commission records indicate that on September 18, 2001, after the hearing, a Commission employee contacted the claimant to inquire as to her absence at the hearing. The notation made by the employee indicates that the claimant advised that she had been told to disregard the hearing because a benefit review conference (BRC) was scheduled in an unrelated dispute. Commission records, however, do not reflect that the claimant was advised not to attend the scheduled hearing. The "show cause" letter was subsequently mailed. There is no indication that the claimant responded or requested that the hearing be reconvened until filing her appeal. The hearing officer closed the record on October 2, 2001, and determined that the claimant had not established good cause for failing to appear at the hearing and that she was not entitled to SIBs.

In Texas Workers' Compensation Commission Appeal No. 941680, decided January 31, 1995, we stated that the standard of review of a good cause determination for failure to appear is one of abuse of discretion and that the test for the existence of good cause is that of ordinary prudence. To determine if the hearing officer abused her discretion, we look to whether the hearing officer acted without reference to any guiding rules and principles. Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986). While there may have been confusion regarding the different hearing and BRC proceedings, the

claimant was given an opportunity to explain her absence from the hearing, as explained in the letter dated September 18, 2001. Given that there is no indication that the claimant explained her absence by responding to the "show cause" letter, we find no abuse of discretion in the hearing officer's finding that the claimant did not establish good cause for failing to appear at the hearing or in closing the record and finding against the claimant on the merits.

The decision and order of the hearing officer are affirmed.

The true corporate name of the carrier is **CONTINENTAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**C. T. CORPORATION
350 N. ST. PAUL
DALLAS, TEXAS 75201.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Michael B. McShane
Appeals Judge