

APPEAL NO. 020273  
FILED MARCH 29, 2002

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 held on December 14, 2001. The hearing officer concluded that the appellant (claimant herein) did not sustain a compensable injury on \_\_\_\_\_. The hearing officer stated that her decision was based upon the fact that the claimant, who bore the burden of proof on the disputed issues, presented no testimony as she did not appear at the CCH. The claimant appeals, arguing that she was unable to attend the hearing due to the fact she was unable to leave work to attend the hearing, but that she attempted to inform her attorney and the Texas Workers' Compensation Commission (Commission) of why she was unable to attend. The claimant requests that she be allowed to present her testimony regarding the disputed issues. The claimant also challenges the hearing officer's decision on sufficiency grounds. There is no response to the claimant's request for review from the respondent (carrier herein) in the appeal file.

DECISION

Reversed and remanded.

The claimant did not appear at the CCH, although her attorney did. The claimant was sent a letter dated December 17, 2001, giving the claimant 10 days to contact the Commission to request the hearing be reconvened to give her an opportunity to present evidence and/or to show good cause for her failure to appear at the CCH. On January 2, 2002, the hearing officer entered a decision adverse to the claimant which was sent to the parties under a cover letter dated January 7, 2002. The hearing officer clearly states the rationale for her decision in the portion of her decision labeled "**DISCUSSION.**" She states that the claimant had the burden of proof on the issues of injury and disability and that absent testimony from the claimant "it would be difficult, to say the least, to enter a decision in her favor." The hearing officer further noted while there were medical records which, if credible, could arguably support findings in the claimant's favor, these records were based upon medical history provided by the claimant, and thus dependent on the claimant's credibility. The hearing officer states as follows:

Since, as indicated above, Claimant failed to appear for the [CCH], thereby rendering it impossible to make any determination regarding her credibility, the Hearing Officer is not inclined to accept these medical records at face value, and therefore is constrained to determine that Claimant has failed to meet her burden of proof.

In her appeal the claimant alleges that she is working as a registered nurse at a kidney center. The claimant states that she had made arrangements to take off work to attend the CCH, but on the day of the CCH and at the end of the claimant's shift, a representative of the Texas Department of Health appeared in her unit announcing, that

he was conducting an official random survey of the facility. The claimant stated that due to the inspection and the fact that two nurses had failed to report for duty, it was impossible for her, as the charge nurse, to leave the facility. The claimant stated that she called the office of her attorney to explain the situation and was told by a staff member that the hearing would be rescheduled.

The claimant states that on the evening of December 21, 2001, she received the letter from the Commission dated December 17, 2001, giving her 10 days to explain why she had not appeared at the CCH. The claimant stated that she attempted to contact her attorney's office and the Commission. The claimant states that the attorney's office was closed and the Commission's field office was closed and remained closed from December 22 through December 26, 2001, in observance of the Christmas holiday. The claimant states that she called the Commission's office several times on December 27, 2001, but was told the person she needed to speak to was unavailable. The day the claimant states she was told that the person she needed to speak with was now out of the office and would not be back until January 3, 2002. The claimant states that she called the Commission on January 3, 2002, and was told that it was too late for her to respond to the letter of December 17, 2001. The claimant states that she then wrote to the hearing officer to explain the situation to her and attaches a copy of this letter to her appeal.

The claimant makes a number of factual allegations in her appeal that, if true, could constitute a basis for good cause for her failure to attend the CCH. We are not in a position to evaluate the credibility of the claimant in regard to these matters. We therefore reverse the decision of the hearing officer and remand the case to her to take evidence concerning the claimant's allegations. To provide a complete record, the hearing officer should permit the claimant to present evidence on the merits of her claim at the hearing on remand.

Finally, we note that the carrier's service information is not in the record. A form for this information was admitted as Hearing Officer Exhibit No. 2, but the form is entirely blank. Generally, under circumstances like these, we would send the carrier an order to provide that information to us, so that we could carry out our statutorily mandated duty to include this information in our decision. However, since we are remanding the case to the hearing officer anyway, we request that she obtain this information. We order the carrier to provide this information to the hearing officer so that she may include it in the record on remand.

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 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's Division of Hearings,

pursuant to Section 410.202. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

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Gary L. Kilgore  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Edward Vilano  
Appeals Judge