

APPEAL NO. 022821  
FILED DECEMBER 23, 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 was held on October 8, 2002. The hearing officer determined that the respondent's (claimant) \_\_\_\_\_, compensable injury extends to and includes the lumbar MRI findings dated April 10, 2002, (Extremely large L4-5 disc extrusion almost completely obliterating the thecal sac. This fills the entire anterior epidural space and much of the spinal canal and is slightly more prominent on the right side. Fairly small broad-based central disc protrusion at L3-4. Small central to slightly left sided L5-S1 disc protrusion). The appellant (carrier) appealed, asserting that the hearing officer committed reversible error by denying its motion for continuance, and otherwise requesting reversal on the merits. The claimant responded, urging affirmance.

DECISION

We reverse and remand.

We first address the carrier's assertion that the hearing officer erred in failing to grant its motion for continuance. The parties stipulated that the claimant sustained a compensable lumbar sprain/strain injury on \_\_\_\_\_. The claimant testified that he saw a doctor at a clinic about a week later but that he was just given medication. He further testified that he next saw a doctor on December 5, 2000, during a trip home for a family function and that he paid for the visit on his own; that he did not seek further treatment until he again returned home in December of 2001; that his next medical treatment was on March 20, 2002; and that he had surgery through the county hospital on September 18, 2002.

The record indicates that the benefit review conference in this matter was held on August 20, 2002. On September 6, 2002, the carrier sent interrogatories to the claimant. The carrier asserts that it received the claimant's undated responses to the interrogatories on September 17, 2002. In response to question number 12, which asked the claimant to identify each place of employment, address, telephone number, and name of your direct supervisor for each of your employers from January 1, 1998, to the present, the claimant only identified the employer where the injury occurred and listed his dates of employment as being "1/97 to 11/02." We note that the claimant testified at the hearing that he actually terminated his employment with that employer in November 2000, but that he worked for "the company" until 2001. On September 26, 2002, the carrier filed a motion for continuance to investigate newly discovered information, which was previously not disclosed by the claimant. The motion was denied. On September 27, 2002, the carrier sent the claimant supplemental interrogatories. The cover letter to the supplemental interrogatories states, in pertinent part, "After some investigation and review of documents you and your treating physicians have filed with the [Texas Workers' Compensation Commission

(Commission)] and due to some inconsistencies in your responses; I contacted you on September 25, 2002 to request clarification. During that conversation, you confirmed that your response to interrogatory number 12 was incomplete." The carrier asserts that it received the claimant's supplemental response on October 4, 2002, in which he listed two additional employers that employed him after the date of injury. The claimant did not respond to either set of interrogatories under oath. The carrier reurged its motion for continuance at the hearing, but the hearing officer denied the motion. At the hearing, the claimant admitted that his response to the first set of interrogatories regarding his employment was inaccurate and incomplete.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.13(d) (Rule 142.13(d)) provides that interrogatories shall be presented no later than 20 days before the hearing, that the answers shall be exchanged no later than five days after receipt, and that the answers shall be made under oath. It appears from the record that the accepted injury was a sprain/strain; that the majority of the claimant's treatment for the injury was received outside the workers' compensation system, so that the carrier might not have knowledge of it; that the carrier was not supplied all of the claimant's medical records; that the first set of interrogatories were presented over 20 days before the hearing; that the answers were not exchanged within five days of receipt; that the answers were, at least in part, inaccurate and incomplete; and that the answers were not made under oath. It further appears from the record that the carrier filed its motion for continuance with the Commission more than five days prior to the hearing as required by Rule 142.10(c)(1)(C).

Section 410.155 states in pertinent part that the Commission may grant a request for a continuance of a scheduled hearing "only if the commission determines that there is good cause for the continuance." We have held that the test for the existence of good cause is that of ordinary prudence, that is, "that degree of diligence as an ordinarily prudent person would have exercised under the same or similar circumstances." Texas Workers' Compensation Commission Appeal No. 91009, decided September 4, 1991. The movant has the burden of establishing good cause, and a hearing officer's ruling will be overturned only for an abuse of discretion; that is, when the hearing officer acts without reference to any guiding rules or principles. Morrow v. HEB, 714 S.W.2d 297 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 931034, decided December 27, 1993. We find that the hearing officer, who offered no explanation why she found that there was no good cause, abused her discretion in denying the carrier's motion for continuance. The carrier was entitled to proceed with the case after appropriate discovery so that it could adequately defend in this case. The carrier was prevented from adequately investigating this case and its lack of information was not due to a lack of diligence, but instead was due to the claimant's failure to disclose information in a timely manner. Because we have determined that the hearing officer abused her discretion in denying the carrier's motion for continuance, we must also reverse the hearing officer's determination regarding extent of injury and remand the case for reconsideration.

We remand the case back to the hearing officer for further proceedings. The carrier shall be allowed the opportunity to fully develop its case and present evidence at the new hearing. 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 Commission's Division of Hearings, pursuant to Section 410.202 (amended June 17, 2001). See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

The true corporate name of the insurance carrier is **PACIFIC EMPLOYERS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**ROBIN MOUNTAIN  
6600 CAMPUS CIRCLE DRIVE EAST  
IRVING, TEXAS 75063.**

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Judy L. S. Barnes  
Appeals Judge

CONCUR:

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Veronica Lopez  
Appeals Judge

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Edward Vilano  
Appeals Judge