

APPEAL NO. 022878
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 16, 2002, with the record closing on November 4, 2002. The disputed issues presented to the hearing officer for resolution were whether the appellant (claimant) sustained a compensable injury on _____, and whether he had disability. Neither the claimant nor a representative on his behalf appeared at the hearing. On October 18, 2002, the Texas Workers' Compensation Commission (Commission) sent a 10-day letter to the claimant, advising him to contact the Commission local office within 10 days to request a rescheduled hearing and show good cause for his failure to appear on October 16, 2002. On November 4, 2002, having received no response from the claimant, the hearing officer closed the record and subsequently issued a decision finding that the claimant did not pursue his claim and is not entitled to benefits. On appeal, the claimant contends that neither he nor his attorney received the 10-day letter and requests a new hearing. The respondent (carrier) urges affirmance.

DECISION

Affirmed.

The claimant argues on appeal that he retained counsel on September 24, 2002, and that two days later said counsel faxed a copy of the letter of representation and a Motion for Continuance to the Commission, requesting that the October 16, 2002, scheduled hearing be reset to a later date. Although the claimant attaches to his appeal copies of these documents, they are not a part of the hearing record. However, notes contained in the Commission's Dispute Resolution Information System (DRIS) indicate that the letter of representation was received by the Commission on September 26, 2002. Furthermore, although the DRIS notes give no indication that the Motion for Continuance was received, there is a notation entered on October 14, 2002, stating that the "continuance request was denied on 10/14/2002." The claimant asserts on appeal that a staff member from his attorney's office called the Commission local office on October 14, 2002, to check the status of the requested continuance and was advised by a Commission employee that "she was sure it would be continued" and gave a proposed new hearing date of December 2, 2002. DRIS notes do not support this assertion.

The claimant does not allege that he was in receipt of an order granting a continuance. Despite this, neither the claimant nor his attorney appeared at the hearing and the Commission subsequently sent a 10-day letter to the claimant, but not his attorney. TWCC Advisory 93-11 dated November 4, 1993, subject: Modification of Commission Operations Concerning Delivery of Documents, states in part:

All documents and notices related to workers' compensation dispute resolution proceedings that are required to be provided by the [Commission] to claimants will continue to be mailed to the Claimant. Notice to the Claimant for all purposes will be established by this notification. If the Claimant is represented by an attorney before the Commission, and the Commission has the address of such attorney in its files, then a courtesy copy of all such documents will be mailed to such attorney.

In Texas Workers' Compensation Commission Appeal No. 011059, decided June 26, 2001, we stated that “[w]hile Rule 102.5(a) does provide that written communications to the claimant shall be sent to the representative, this has been interpreted to be a courtesy copy as provided for in TWCC Advisory 93-11. . . .” Although the claimant contends that he did not receive the letter, he does not argue that the letter was mailed to an incorrect address or give any explanation as to why the letter was not received. For the foregoing reasons, we cannot agree that the hearing officer erred in determining that the claimant is not entitled to benefits because he failed to appear at the hearing and failed to respond to the 10-day letter.

The hearing officer’s decision and order is affirmed.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Chris Cowan
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Edward Vilano
Appeals Judge