

APPEAL NO. 031627
FILED AUGUST 11, 2003

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 May 19, 2003. The appellant (attorney) did not appear at the CCH. The hearing was conducted in his absence and the hearing officer determined that the attorney is entitled to \$0.00 in total fees. The attorney appeals, asserting that he never received any notice of the scheduling of an attorney's fee CCH. Our file does not contain a response from respondent 1 (claimant), and respondent 2 (carrier).

DECISION

Reversed and remanded.

The record reflected that the attorney failed to appear at the CCH. The hearing officer did not make a finding regarding good cause for the failure of the attorney to attend the CCH. See Texas Workers' Compensation Commission Appeal No. 962387, decided January 14, 1997, indicates that "after a single failure to appear," the hearing officer does not have authority to preclude the nonattending party from presenting evidence. See Texas Workers' Compensation Commission Appeal No. 960464, decided April 22, 1996, which referred to a process in which a party was given 10 days to request an opportunity to show cause; the Appeals Panel in that case commented that another procedure would be for the hearing officer to "affirmatively set" a hearing date, with written notice to both parties, at which time cause could be considered and, regardless of the outcome concerning cause, evidence on the merits could be presented. *Also see* Texas Workers' Compensation Commission Appeal No. 970121, decided March 4, 1997, which also applied the "single failure to appear" criterion in remanding for another hearing. That case held that another hearing should be set at which time either party may present evidence, regardless of whether the evidence relating to good cause is believed or not. The Appeals Panel has held that should a party fail to appear for the next hearing, after adequate notice has been given, the hearing officer could then issue a decision.

There is no evidence that a "show cause letter" was sent to the attorney in this case or that another CCH was scheduled. We find our decisions in Appeal Nos. 960464, decided April 22, 1996 and 970121, decided March 4, 1997 to be controlling under the circumstances presented in the instant case, which does not involve repeated failures to appear at a scheduled CCH. In accordance with our precedent, the hearing officer should schedule another CCH, order the attorney to attend, afford him the opportunity to show good cause for not attending the CCH on May 19, 2003, and take evidence on the merits of the attorney's fee issue. With respect to whether the claimant's former attorney had good cause for not attending the CCH, we note that the address to which the official notice of hearing was mailed was not the same address as listed on the attorney's letterhead accompanying his appeal.

In addition to remanding the case for consideration and development of the evidence on the matter of good cause for not attending the CCH, we remand for further consideration of the disputed issue of attorney's fees on the basis of the evidence, including that which may be presented by the attorney at the CCH on remand, and whether or not the hearing officer finds good cause for attorney's failure to appear at the May 19, 2003, CCH.

We also remand for the purpose of obtaining compliance with House Bill 2600, which amended Section 410.164, effective June 17, 2001. Section 410.164 was amended by the addition of subsection (c), which provides as follows:

(c) At each [CCH], as applicable, the insurance carrier shall file with the hearing officer and shall deliver to the claimant a single document stating the true corporate name of the insurance carrier and the name and address of the insurance carrier's registered agent for service of process. The document is part of the record of the [CCH].

The hearing officer's decision does not list the insurance carrier information form as a Hearing Officer Exhibit; nor was such an exhibit sent to the Appeals Panel.

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, as amended effective June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of time in which a request for appeal or a response must be filed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Edward Vilano
Appeals Judge