

APPEAL NO. 032346
FILED OCTOBER 21, 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 August 12, 2003, with the record closing on August 21, 2003. The hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits for the 7th through the 10th quarters.

The record shows that the claimant was not present at the CCH. The hearing officer recites, and makes part of the record, a "Request to Withdraw" from the claimant, requesting that the case be dismissed, signed by the ombudsman and attaching a letter from the claimant's wife. The letter generally indicates that the claimant does not believe he would prevail and advises that neither the claimant nor his wife would attend the CCH. Nonetheless, the hearing officer issued a "ten day letter" advising the claimant that he could request the hearing be "reconvened to permit [the claimant] to present evidence on the issue." The hearing officer in her decision states that there was no response from the claimant to the 10-day letter and that the record was closed on August 21, 2003, and a decision rendered.

Subsequently the Texas Workers' Compensation Commission received a letter dated September 4, 2003, "requesting Appeals Panel to review the decision of the hearing officer," from the claimant's wife attaching audiotapes and several inches of documents, acknowledging receipt of the 10-day letter and stating 10 days was insufficient time "to get anymore medical evidence" to send to the ombudsman. The carrier responded giving reasons why the Request for Review should not be considered.

DECISION

Affirmed.

The claimant had requested that his case "be stopped," failed to attend the scheduled CCH, and failed to respond to the hearing officer's 10-day letter. Instead the claimant sends us material and documents which should have been presented to the hearing officer at the CCH. The review of the Appeals Panel is generally limited to the record developed at the CCH. Section 410.203. In determining whether the submitted documents require remand for further consideration the Appeals Panel considers whether the documents were not offered at the CCH due to a lack of diligence. Jackson v. Van Winkle, 660 S.W.2d 807 (Tex. 1983). In this case we note that the claimant sought to have his case dismissed, failed to attend the CCH, and failed to respond to the hearing officer's 10-day letter. We conclude that the claimant was afforded due process to present his case and we decline to remand the case for another CCH.

The hearing officer's decision and order are affirmed.

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

GARY SUDOL
9330 LBJ FREEWAY, SUITE 1200
DALLAS, TEXAS 75243.

Thomas A. Knapp
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Panel
Manager/Judge

CONCUR IN THE RESULT:

Edward Vilano
Appeals Judge