

APPEAL NO. 032514  
FILED NOVEMBER 12, 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 was held on July 15 and September 2, 2003. The hearing officer determined that the \_\_\_\_\_, injury of appellant (claimant) includes the right elbow but does not include the neck. Claimant appealed on sufficiency grounds and also contends that she was unjustly denied a hearing. The respondent (carrier) responds that the Appeals Panel should affirm the decision and order.

DECISION

We affirm.

Claimant contends that she was unjustly denied a hearing. The record reflects that a hearing was commenced on July 15, 2003, but claimant did not appear. A "show cause letter" to claimant dated July 15, 2003, is in the record which states that claimant must contact the Texas Workers' Compensation Commission (Commission) within 10 days to request that the hearing be reconvened. The hearing officer stated that claimant contacted the Commission within 10 days and that a hearing was scheduled. The record reflects that the hearing was scheduled for September 22, 2003, and then rescheduled for September 2, 2003, at 1:30 p.m. A letter stating that the hearing would be September 2, 2003, at 1:30 p.m. is in the record and it appears that copies were addressed to claimant and her representative, Mr. G. The record reflects that a hearing was convened on September 2, 2003. The hearing officer stated on the record that the time was 1:45 p.m., that the attorney for carrier was present, and that they had waited for 15 minutes, but claimant did not appear. The hearing officer then discussed the letter sent to claimant and the evidence that had been offered by claimant's representative at the July 15, 2003, hearing. The hearing officer closed the record. The file does not contain any further correspondence with claimant other than the appeal.

On appeal, claimant contends that the hearing was rescheduled to September 2, 2003, "without prior notice to either the claimant or the lay representative." However, a letter was sent to claimant regarding the rescheduled hearing. It also appears from reading the brief that claimant did in fact arrive at the field office on September 2, 2003, although she arrived late. Therefore, it appears that claimant and her representative did receive notice of the September 2, 2003, hearing. Because they did appear, the statement that they did not receive "prior notice" of the hearing is not persuasive.

Claimant's appeal states that the lay representative had two hearings scheduled for the same time with different hearing officers on September 2, 2003. The appeal further states that claimant and her representative arrived late and then waited to be called for the hearing, but due to confusion at the field office, she missed the hearing

and was told to appeal. Given the record before us, we perceive no error. It was claimant's responsibility to ensure that she arrived on time for the hearing.

Claimant contends that the hearing officer's determinations are not supported by sufficient evidence. The issue to be resolved was whether claimant's \_\_\_\_\_, injury includes the right elbow and neck. The hearing officer found in claimant's favor regarding the right elbow and it appears that claimant appeals only the adverse determination regarding the neck. We have reviewed the complained-of determination and conclude that the issue involved a fact question for the hearing officer. The hearing officer reviewed the record and decided what facts were established. We conclude that the hearing officer's determination is supported by the record and is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the hearing officer's decision and order.

According to information provided by carrier, the true corporate name of the insurance carrier is **ROYAL INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
800 BRAZOS  
AUSTIN, TEXAS 78701.**

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Judy L. S. Barnes  
Appeals Judge

CONCUR:

\_\_\_\_\_  
Thomas A. Knapp  
Appeals Judge

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Robert W. Potts  
Appeals Judge