

APPEAL NO. 032853
FILED DECEMBER 22, 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 September 5, 2003, with the record closing on September 22, 2003. The appellant (claimant's attorney) did not appear at the hearing. The hearing officer issued a 10-day "Show Cause" letter. The hearing officer found that the claimant's attorney failed to timely respond to the 10-day "Show Cause" letter and is entitled to attorney's fees in the amount of zero dollars for the period of October 2 through October 11, 2002. The claimant's attorney appeals, asserting that he timely responded to the 10-day "Show Cause" letter and the hearing officer erred by not reconvening the hearing. No response was filed.

DECISION

Affirmed.

As stated above, the claimant's attorney failed to appear at the CCH for attorney's fees, on September 5, 2003. The hearing officer issued a letter, on September 8, 2003, requiring the claimant's attorney to "contact this [Texas Workers' Compensation Commission (Commission)] office within ten (10) days of the date of this letter to request that the [CCH] in this matter be reconvened to permit you to present evidence on these issues, and to show good cause why you failed to attend the [CCH]." The record reflects that the letter was mailed to the correct address. The hearing officer found that the claimant's attorney did not respond and determined that he is not entitled to attorney's fees for the period of October 2 through October 11, 2002. The claimant's attorney appeals asserting that he timely responded to the 10-day "Show Cause" letter and the hearing officer erred by not reconvening the hearing. The claimant's attorney attached a copy of the response and a fax confirmation sheet to his appeal. The fax confirmation sheet does not show what, if anything, was sent to the Commission. Additionally, Commission records show that the response was not received within the required period.

The hearing officer did not err in determining that the claimant's attorney failed to timely respond to the 10-day "Show Cause" letter and is entitled to attorney's fees in the amount of zero dollars for the period of October 2 through October 11, 2002. We have said that a hearing officer does not have authority to preclude a nonattending party from presenting evidence, "after a single failure to appear." Texas Workers' Compensation Commission Appeal No. 962387, decided January 14, 1997. Rather, the established procedure requires that the hearing officer "affirmatively set" a new hearing date or give the nonattending party 10 days to request that the hearing be reconvened, to consider whether good cause exists for the party's failure to appear at the original hearing, and for the presentation of evidence on the certified issue(s). See Texas Workers' Compensation Commission Appeal No. 960464, decided April 22, 1996. Should a party

fail to appear for the next hearing, after adequate notice has been given, the hearing officer could then issue a decision. See Texas Workers' Compensation Commission Appeal No. 991155, decided July 15, 1999. Upon our review of the record, the hearing officer could find that the claimant's attorney failed to timely respond to the 10-day "Show Cause" letter and is not entitled to attorney fees for the period of October 2 through October 11, 2002. Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986).

The decision and order of the hearing officer is affirmed.

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

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Edward Vilano
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Margaret L. Turner
Appeals Judge