

APPEAL NO. 033067  
FILED JANUARY 13, 2004

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 July 28, 2003, with the record closing on October 16, 2003. The appellant (claimant) did not appear at the July 28, 2003, CCH. A "ten-day show cause letter" for his failure to appear was sent to the claimant. The claimant responded by and through his attorney to the ten-day show cause letter, however, the claimant and his attorney again failed to appear for the October 16, 2003, CCH. The hearing officer determined that the claimant did not sustain a compensable injury on \_\_\_\_\_; that the claimant did not timely report an injury to the employer; that no good cause existed under the 1989 Act for the claimant's failure to timely notify his employer of the occurrence of a work-related injury; and that respondent 1 (carrier) did not waive its right to dispute compensability of the claim. The claimant appealed the hearing officer's determinations and asserted that he did not receive notice of the October 16, 2003, CCH, to present the merits of his case. The appeal file does not contain a response from the carrier or respondent 2 (subclaimant).

DECISION

Affirmed.

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

The record reflected that the claimant and his attorney failed to appear at the July 28, 2003, CCH, and that the hearing officer sent the claimant a ten-day show cause letter for his failure to appear at the July 28, 2003, CCH. The hearing officer noted in his decision that the claimant responded to a ten-day letter by and through his attorney, and that the claimant and his attorney failed to appear at the October 16, 2003, CCH. We note that the hearing officer did not make a finding regarding good cause for the failure of the claimant to appear at the July 28, 2003, CCH.

The claimant asserts that he did not receive notice of the October 16, 2003, CCH, to present the merits of his case. The Appeals Panel has held 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 ten 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. The hearing officer noted in his decision that the claimant responded to the ten-day show cause letter, however, the "claimant failed to appear and pursue this claim." In the instant case there is no evidence that the claimant was not given adequate notice to appear at the October 16, 2003, CCH to show cause for his failure to appear and to present the merits of his case. We perceive no error.

We have reviewed the complained-of determinations. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given to the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). Nothing in our review of the record indicates that the hearing officer's determinations on the disputed issues are so against the great weight and preponderance of the evidence so as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to disturb those determinations on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986).

The hearing officer's decision and order are affirmed.

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

**MR. RUSSELL R. OLIVER, PRESIDENT  
221 WEST 6TH STREET  
AUSTIN, TEXAS 78701.**

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Gary L. Kilgore  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Margaret L. Turner  
Appeals Judge