

APPEAL NO. 040184
FILED MARCH 9, 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 was held on December 2, 2003. Neither the appellant (claimant) nor his attorney appeared at the hearing. On December 2, 2003, the Texas Workers' Compensation Commission (Commission) sent a 10-day letter to the claimant and his attorney, advising them to contact the Commission's Fort Worth office within 10 days to request a rescheduled hearing and show good cause for their failure to appear at the hearing. On December 15, 2003, having received no response from either the claimant or his attorney, the hearing officer closed the record and subsequently issued a decision finding that the claimant is not entitled to supplemental income benefits (SIBs) for the 11th quarter. The claimant appeals the determinations that he did not have good cause for his failure to attend the hearing and that he is not entitled to SIBs. The claimant asserts that he was unable to attend the hearing because he "was sick, was homeless, and had no transportation." He also states that he did not receive the 10-day letter and he requests that a new hearing be scheduled. The claimant's attorney appeals the finding that she did not have good cause for failing to attend the hearing, arguing that she had notified the Commission on November 24, 2003, of her withdrawal from the claimant's case. The respondent (carrier) urges affirmance of the hearing officer's decision.

DECISION

Affirmed in part; reversed and rendered in part.

We initially address the hearing officer's good cause findings. With regard to the claimant's failure to appear at the hearing, the hearing officer sent the 10-day letter to the claimant at the address on file with the Commission and, additionally, to his attorney. The claimant contends that he did not receive this letter, presumably because he was no longer living at the address previously provided to the Commission. The claimant was provided with notice of the initial hearing date and given an additional 10 days to contact the Commission to provide an explanation for his absence. It was incumbent upon the claimant to either provide the Commission with a new mailing address or, in the alternative, to remain in contact with the Commission regarding hearing dates in order to fulfill his obligation of pursuing the claim. Under the facts of this case, the hearing officer did not err in determining that the claimant did not have good cause for his failure to appear at the hearing.

With regard to the claimant's attorney's failure to appear at the hearing, the attorney states in her appeal that on November 24, 2003, she notified the Commission's Fort Worth office via facsimile transmission that she no longer represented the claimant.¹ The attorney also has provided a copy of the transmission verification report

¹ On appeal, the attorney has also provided a copy of an "Authority To Represent," wherein she agreed to resume representation of the claimant's case on January 23, 2004.

of this fax, which reflects that it was successfully transmitted to the Forth Worth office. There is no indication that the hearing officer received this fax. Having no explanation for the attorney's absence at the hearing, the hearing officer properly found that the attorney did not have good cause for her failure to appear. However, because it appears that the attorney did in fact notify the Commission of her withdrawal prior to the hearing date, the determination that the attorney did not have good cause for her failure to appear at the hearing is reversed and a new decision rendered that she had good cause for her failure to appear.

Because the claimant failed to appear at the hearing and failed to show good cause for his failure to appear, the hearing officer determined that the claimant is not entitled to SIBs for the 11th quarter. The claimant had the burden of proving entitlement to SIBs. As he presented no evidence on his behalf, the hearing officer did not err in rendering a decision against the claimant.

The finding of fact that the claimant's attorney did not have good cause for her failure to attend the hearing is reversed. The finding of fact that the claimant did not have good cause for his failure to attend the hearing and the conclusion that the claimant is not entitled to 11th quarter SIBs are affirmed.

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

**WILLIAM CLARK THORNTON
122 WEST CARPENTER FREEWAY, SUITE 350
IRVING, TEXAS 75039.**

Chris Cowan
Appeals Judge

CONCUR:

Margaret L. Turner
Appeals Judge

Edward Vilano
Appeals Judge