

APPEAL NO. 041996
FILED SEPTEMBER 30, 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 1, 2004, with the record closing on July 23, 2004. The appellant (claimant) did not appear at the hearing. The hearing officer issued a 10-day show cause letter. The hearing officer found that the claimant failed to timely respond to the 10-day show cause letter and determined that the claimant's compensable injury of _____, does not include the right rotator cuff tear or Bankart lesion. The claimant appeals, asserting that she did "everything that I was told to and my case should have been placed on hold until I was able to appear." The respondent (carrier) urges affirmance.

DECISION

Affirmed.

The record reflects that a hearing, in this matter, was scheduled for March 24, 2004. The claimant requested that the proceeding be continued due to a high-risk pregnancy. The request was granted and the CCH was rescheduled for July 1, 2004. On the morning of the CCH, the ombudsman left a message for the claimant, asking whether she intended to pursue her extent-of-injury claim. The ombudsman represented that the claimant left a return message a few minutes prior to the CCH but did not indicate whether she intended to pursue the issue, stating only that she would call again.

The hearing officer convened the hearing as scheduled, on July 1, 2004. The hearing officer issued a 10-day show cause letter, on the same date, requiring the claimant to "contact this [Texas Workers' Compensation] 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 claimant's correct address. The hearing officer found that the claimant failed to appear and pursue the disputed issue. In the absence of evidence supporting the extent of injury, the hearing officer issued a decision that the claimant's compensable injury of _____, does not include the right rotator cuff tear or Bankart lesion.

The claimant now appeals, asserting:

Prior to July 1, 2004 I informed my Ombudsman both written and verbally that I was unable to pursue my case at this time due to a high risk pregnancy. The previous benefit review conference was cancelled due to this. After this second benefit review conference was scheduled, I faxed a second letter informing my Ombudsman that I was still unable to pursue my case until further notice. On the day that the conference was

scheduled my Ombudsman left a message for me, in which I called back and talk to an assistant and advised I wouldn't be attending the conference. After this date, I never received anything in the mail until I received this decision that my case was denied because I didn't appear. On receiving this letter I called and talked to the Ombudsman assistant, she remembered me calling and informing them. She said the problem was; the hearing officer didn't know when my child was due. I never received a letter or a phone call requesting this information. Due to these facts, I feel like I did everything that I was told to and my case should have been placed on hold until I was able to appear.

The hearing officer did not err in reaching the complained-of determinations. 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, at a minimum, that the hearing officer issue a 10-day show cause letter which gives the nonattending party 10 days to request an opportunity to show cause for the failure to appear and request that the hearing be reconvened, or which "affirmatively sets" a new CCH, with written notice to all parties, for a show cause hearing followed immediately by a hearing on the merits of the certified issue(s). See Texas Workers' Compensation Commission Appeal No. 033116-s, decided January 22, 2004. 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 record, in this case, shows that a CCH was convened on July 1, 2004; the claimant failed to appear or request a continuance; a 10-day show cause letter was mailed to the claimant's correct address; and the claimant failed to timely respond. Accordingly, no sound basis exists for us to disturb the hearing officer's decision on appeal. Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

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

**CT CORPORATION SYSTEMS
350 NORTH ST. PAUL, SUITE 2900
DALLAS, TEXAS 75201.**

Edward Vilano
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Margaret L. Turner
Appeals Judge