

APPEAL NO. 042634
FILED NOVEMBER 29, 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 August 26, 2004, with the record closing on September 14, 2004. The hearing officer determined that the appellant (claimant) reached maximum medical improvement (MMI) on August 6, 2003, with a 10% impairment rating (IR) as assessed by the designated doctor.

The claimant appealed, contending that the designated doctor did not adequately examine her, that her MMI date should be "November 2003" with a 40% IR and that we should consider letters from her doctor. The file does not contain a response from the respondent (carrier).

DECISION

Reversed and remanded.

In the file is a letter dated July 12, 2004, from the claimant stating that she would "like to cancel" her CCH. Nonetheless a CCH was held on August 26, 2004, at which the claimant failed to appear. At the CCH an ombudsman stated that the claimant had told her that the claimant did not want to proceed and she wanted to have the CCH cancelled. The hearing officer took some evidence and announced that she would send the claimant a "10-day" letter. In the file is a letter dated August 27, 2004, which states in relevant part:

. . .you neither appeared for the hearing nor did you contact this office to notify the [Texas Workers' Compensation Commission (Commission)] of your intentions. Therefore, you are requested to please contact this office by letter or by telephone upon receipt of this letter if you wish to pursue your claim. You do not need to contact the Commission if you do not want to pursue your claim.

This office will postpone the taking of any action in connection with this hearing until ten (10) days from the date of this letter.

The hearing officer recites that "on September 3, 2004, Claimant contacted the Commission by phone and advised she wanted to cancel the hearing. As a result, no evidence was presented to show the certification of the designated doctor was not correct." The hearing officer issued her decision and order and the claimant filed a timely appeal.

After a CCH is set, a party cannot unilaterally "cancel" a CCH. After the CCH, the hearing officer sent the claimant a 10-day letter. The claimant, within 10 days

responded, apparently again stating she wanted to cancel the hearing. In this case, the claimant was never advised that she could not cancel a CCH or that her request had been denied. The claimant, equally apparently, was not advised that the hearing which had already taken place might result in an adverse decision.

The Appeals Panel recognizes the long standing Commission policy to send out what has become known as a 10-day letter. The purpose of the 10-day letter process is to give the non-appearing party the opportunity to meaningfully participate in the dispute resolution process. The claimant's persistent requests for cancellation of the CCH were not responded to and a decision adverse to the claimant was issued. The claimant was not advised that:

A CCH had been held

Evidence was admitted at the CCH

A CCH decision would be issued unless the claimant requested to have the CCH reconvened to present evidence on her behalf

Without this essential information, the purpose of the 10-day letter was thwarted denying the claimant the opportunity to meaningfully participate in the dispute resolution process.¹

The case is remanded to allow the claimant an opportunity to present evidence if she wishes. As a separate issue, the hearing officer will determine whether the claimant had good cause for not attending the August 26, 2004, CCH.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Commission's Division of Hearings, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

¹ At a CCH reconvened based on the 10-day letter process, the hearing officer is to make a determination on whether the non-appearing party had good cause for not appearing for the originally scheduled CCH. Necessarily the non-appearing must be given notice of this inquiry. Prudently, such a notice is usually included in the 10-day letter.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Robert E. Lang
Appeals Panel
Manager/Judge