

APPEAL NO. 091305  
FILED NOVEMBER 4, 2009

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 convened on June 16, 2009f. The disputed issues from the benefit review conference (BRC) were:

1. Does the compensable injury of \_\_\_\_\_, extend to include chronic pain?
2. Does the compensable injury of \_\_\_\_\_, include an injury to the lumbar spine after November 1, 2001?

Both the appellant (subclaimant) and respondent 1 (carrier) filed responses to the BRC report. The subclaimant indicated that it did not wish to proceed on the first issue. The carrier contends that the only issue is "that an intervening injury occurred on or about November 1, 2001 which resulted in additional treatment unrelated to the compensable event." Respondent 2 (claimant) did not attend the BRC and did not file a response.

The hearing officer, in the Background Information portion of his decision comments:

Although properly notified, [c]laimant failed to appear for the [CCH] scheduled for 1:30 PM on June 16, 2009. A letter advising that the hearing had convened and that the record would be held open for ten days to afford [c]laimant the opportunity to respond and request that the hearing be rescheduled to permit him to present evidence on the disputed issues was mailed to [c]laimant on June 16, 2009. Claimant failed to respond to the [Texas Department of Insurance, Division of Workers' Compensation (Division)'s] 10-day letter and, on July 23, 2009, the record was closed. Having failed to appear and offer evidence in support of his claim, [c]laimant failed to show that he is entitled to the relief he seeks.

The hearing officer in Findings of Fact found:

4. Claimant failed to appear for the June 16, 2009, [CCH] and did not respond to the Division's letter offering him/her the opportunity to have the hearing rescheduled.
5. No evidence was received that showed that the [c]laimant's compensable injury of \_\_\_\_\_, extended to include chronic pain.

6. No evidence was received that showed that the [c]laimant's compensable injury of \_\_\_\_\_, extended to include an injury to the lumbar spine after November 1, 2001.
7. No evidence was received that showed that the [c]laimant had good cause for his failure to appear for the [CCH].

The hearing officer concluded that the compensable injury of \_\_\_\_\_, does not include chronic pain and does not include an injury to the lumbar spine after November 1, 2001.

The subclaimant appealed contending it, rather than the claimant, had requested the BRC and CCH. The subclaimant further alleges that it was not allowed to present its case, and that the hearing officer stated "we could not have a hearing since claimant did not show." The subclaimant states that no evidence at all was exchanged or submitted to the hearing officer. The carrier responded. The appeal file does not contain a response from the claimant.

## DECISION

Reversed and remanded.

First, we note that there was no transcript, compact disc, audio tape or any other recording of the hearing in the file forwarded for review. The file did contain the BRC report, Insurance Carrier Information Form, and the responses to the BRC report. The file also contained a copy of the hearing officer's "10-day letter" dated June 16, 2009, to the claimant and the "green card" showing receipt on July 15, 2009. The file also has what is labeled "Carrier's Exhibit List" and well over 200 pages of untabbed and unmarked medical records. There is no evidence the medical records were exchanged or admitted into evidence.

The carrier also appears to raise the issue of whether the subclaimant has standing. 28 TEX. ADMIN. CODE § 140.1(4) (Rule 140.1(4)) defines a "party to a proceeding" as a person entitled to take part in a proceeding because of a direct legal interest in the outcome. In Appeals Panel Decision (APD) 070647-s, decided July 18, 2007, the Appeals Panel held that a subclaimant is a party to the proceeding as having a direct legal interest in the outcome and was to be given the opportunity to participate in the dispute resolution process on the disputed extent-of-injury issue. In this case, the subclaimant alleges that it has rendered services to the claimant from February 20 through April 23, 2004, and is seeking reimbursement for those services. As such, the subclaimant in this case is seeking to show that the claimant's compensable injury of \_\_\_\_\_, extends to include chronic pain and an injury to the lumbar spine after November 1, 2001, in the dispute resolution process on the extent-of-injury issue(s). We note that whether the subclaimant had standing was not a disputed issue to be decided at the CCH.

The hearing officer erred in failing to hold a hearing wherein the subclaimant, as a party, was allowed to present evidence and be heard on the disputed issues before the hearing officer. Accordingly, we reverse the hearing officer's determinations on the extent-of-injury issues before him and remand this case back to the hearing officer to allow the subclaimant and the carrier the opportunity to participate in the dispute resolution process, and present evidence if they wish to do so. The hearing officer is then to issue a decision on the issues before him consistent with this decision.

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 Division, 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 APD 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **ST. PAUL GUARDIAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY D/B/A  
CSC - LAWYERS INCORPORATING SERVICE COMPANY  
701 BRAZOS STREET, SUITE 1050  
AUSTIN, TEXAS 78701.**

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Veronica L. Ruberto  
Appeals Judge

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Margaret L. Turner  
Appeals Judge