

APPEAL NO. 101780
FILED FEBRUARY 14, 2011

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 October 18, 2010, with the record closing on November 3, 2010. The appellant/cross-respondent (claimant) did not appear at the CCH. The claimant's attorney and the respondent/cross-appellant's (carrier) attorney appeared at the CCH. The hearing officer sent the claimant a 10-day letter via United States Postal Service on October 18, 2010. The hearing officer found that:

The [c]laimant failed to appear for the October 18, 2010, [CCH] and did not respond to the [Texas Department of Insurance, Division of Workers' Compensation (Division)'s] letter offering him the opportunity to have the hearing rescheduled. The [c]laimant did not show good cause for failing to appear at the [CCH].

The hearing officer, without allowing either party an opportunity to present evidence, resolved the disputed issues by determining that the employer did not make a bona fide offer of employment (BFOE) to the claimant and that the claimant did not have disability resulting from an injury sustained on _____, from June 5, 2010, through the date of the CCH.

The claimant appealed the hearing officer's finding that he did not respond to the Division's 10-day letter offering him the opportunity to have the hearing rescheduled and the finding that he did not show good cause for failing to appear at the CCH. The claimant also appealed the hearing officer's determination on disability. The carrier cross-appealed the hearing officer's determination that the employer did not make a BFOE to the claimant, stating it offered no evidence on this disputed issue because the claimant failed to appear at the CCH to offer evidence on disability. The carrier contended that if the case is re-opened to allow the claimant to present evidence on the issue of disability, the carrier should be allowed to present evidence on the issue of a BFOE. The appeal file does not contain a response from the carrier to the claimant's appeal or a response from the claimant to the carrier's cross-appeal.

DECISION

Reversed and remanded.

On appeal, the claimant argues he timely responded to the hearing officer's 10-day letter on October 21, 2010, in a letter sent via facsimile (fax) from the claimant's attorney to the hearing officer, which stated:

I have spoken with [the claimant] today and he informed me that he indeed wishes to proceed on his claim. I instructed him to call the

[Division] and to express his intention to proceed as well. I therefore ask that the [Division] schedule another CCH date mutually agreeable to the parties.

This letter is attached to the claimant's appeal along with a fax transmission confirmation that the letter was sent to the attention of the hearing officer at the (city) field office on October 21, 2010. The CCH file also contains a copy of the October 21, 2010, letter sent by the claimant's attorney and date-stamped received in the (city) field office on October 21, 2010. The evidence indicates that the claimant timely responded to the 10-day letter on October 21, 2010.

Without issuing a notice for a date to reconvene the CCH to allow the claimant an opportunity to present evidence on whether he had good cause for his failure to appear at the CCH on October 18, 2010, or to allow either parties to present evidence on the disputed issues, the hearing officer resolved the disputed issues in a decision and order signed on November 3, 2010, and issued on November 9, 2010.

In Appeals Panel Decision (APD) 071706, decided November 15, 2007, the Appeals Panel noted that 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.

In APD 042634, decided November 29, 2004, the claimant did not attend a CCH held on August 26, 2004. The hearing officer sent the claimant a 10-day letter. The CCH was not reconvened and no evidence was presented by the claimant on the disputed issues of maximum medical improvement and impairment rating because the hearing officer found that the claimant had wanted to cancel the CCH. However, the claimant was not advised that she could not unilaterally cancel a CCH, that her request had been denied, or that a decision would be issued unless the claimant requested to have the CCH reconvened to present evidence on her behalf. Rather, the hearing officer issued her decision and order. The claimant then filed a timely appeal. The claimant attached to her appeal a copy of the Division 10-day letter, the claimant's attorney's response to the 10-day letter, and a fax confirmation sheet showing the attorney's response was sent to the hearing officer. The Appeals Panel held that the evidence indicated that the claimant timely responded to the Division's 10-day letter and reversed the hearing officer's determinations, and remanded the case to allow the claimant an opportunity to present evidence if she wished. As a separate issue, the hearing officer was to determine whether the claimant had good cause for failing to attend the date of the CCH.

In the instant case before us, the evidence establishes that the claimant's attorney timely responded to the hearing officer's 10-day letter, requesting the hearing officer to reschedule the CCH. Therefore, the hearing officer erred in failing to reconvene the CCH to: (1) allow each party the opportunity to present evidence if they wish on the disputed issues; and (2) as a separate issue, determine if the claimant had good cause for not attending the October 18, 2010, CCH.

We reverse the hearing officer's findings that: (1) the claimant did not respond to the Division's 10-day letter offering him the opportunity to have the hearing rescheduled; and (2) the claimant did not show good cause for failing to appear at the CCH.

We reverse the hearing officer's determinations that: (1) the employer did not make a BFOE to the claimant; and (2) the claimant did not have disability resulting from an injury sustained on _____, from June 5, 2010, through the date of the CCH.

The case is remanded to allow each party an opportunity to meaningfully participate in the dispute resolution process and to present evidence if they wish on the disputed issues. As a separate issue, the hearing officer will determine whether the claimant had good cause for not attending the October 18, 2010, 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 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 **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**RON O. WRIGHT, PRESIDENT
6210 EAST HIGHWAY 290
AUSTIN, TEXAS 78723.**

Cynthia A. Brown
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Carisa Space-Beam
Appeals Judge