

APPEAL NO. 110624
FILED JULY 1, 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 March 24, 2011, with the record closing on April 7, 2011, in (City), Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issue by deciding that since (decedent) was not survived by any eligible beneficiary, the workers' compensation death benefits at issue in this case shall be paid to respondent 2 (Subsequent Injury Fund (SIF)).

The appellant (claimant beneficiary) appealed, disputing the hearing officer's determination that the decedent was not survived by any eligible beneficiary and alleging that she did not receive notice of the CCH but did receive the 10-day letter sent to her when she did not appear at the CCH. The claimant beneficiary stated that the 10-day letter was dated January 18, 2007, although the envelope was dated April 19, 2011. Respondent 1 (carrier) responded, urging affirmance. The appeal file does not contain a response from the SIF.

DECISION

Reversed and remanded.

The disputed issue as stated in the benefit review conference (BRC) report was: "Is [claimant beneficiary] the proper legal beneficiary of the decedent entitling her to death benefits?" The carrier filed a response to the BRC report asking that the issue be changed to: "Who is the proper legal beneficiary of the decedent entitling him/her to death benefits?" The carrier noted in its response that a grandson of the decedent may have received monetary support from the decedent, making the grandson a potential beneficiary. However, the record does not reflect that notice of the BRC or notice of the CCH was sent to the grandson or his guardian.

The claimant correctly notes in her appeal that the date of the 10-day letter sent was January 18, 2007. The 10-day letter states that the claimant beneficiary should contact the (City) field office within 10 days of the date of the letter to request the hearing be reconvened to permit her to present evidence on the disputed issue and to show good cause why she failed to attend the CCH. The claimant alleges in her appeal that she never got notice of the CCH and that the envelope she received the 10-day letter in was dated April 19, 2011. The 10-day letter in the appeal file was addressed to the claimant at an address Texas Department of Insurance, Division of Workers' Compensation (Division) records indicate was changed in December of 2010.

In Appeals Panel Decision (APD) 042634, decided November 29, 2004, 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 020273, decided March 29, 2002, a claimant made a number of factual allegations in her appeal regarding good cause for failing to attend the CCH and her attempts to respond to the 10-day letter, and the Appeals Panel stated that it was not in a position to evaluate the credibility of the claimant in regard to those matters and thus, remanded the case to the hearing officer to take evidence concerning the claimant's allegations and to permit the claimant to present evidence on the merits of her claim at the CCH on remand.

In the instant case, Division records indicate the 10-day letter was sent to the claimant beneficiary at the wrong address and although the claimant beneficiary acknowledged its receipt, she maintained she did not receive it in time to respond and did not receive the notice of the CCH. Further, the claimant beneficiary stated the incorrect date at the top of the 10-day letter caused her confusion about what action she should take. Additionally, as previously noted the hearing officer modified the disputed issue at the CCH to determine who are the proper beneficiaries of the workers' compensation death benefits payable on account of the decedent's compensable fatal injury of [date of injury], and although a grandson was noted by the carrier as a potential beneficiary there was no evidence he or his guardian received notice of the CCH.

Accordingly, we reverse the hearing officer's determination that since the decedent was not survived by any eligible beneficiary, the workers' compensation death benefits at issue in this case shall be paid to the SIF and remand this case to the hearing officer to determine whether the claimant beneficiary had good cause for failing to appear at the March 24, 2011, CCH, afford the parties including the SIF the opportunity to present evidence on the disputed issues, and give notice of the CCH to the grandson who has been identified as a potential beneficiary.

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 **HARTFORD CASUALTY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701-3218.**

Margaret L. Turner
Appeals Judge

CONCUR:

Cynthia A. Brown
Appeals Judge

Thomas A. Knapp
Appeals Judge