

APPEAL NO. 122243
FILED DECEMBER 17, 2012

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 September 12, 2012, in [City], Texas, with [hearing officer] presiding as hearing officer. With regard to the issues before him, the hearing officer determined that: (1) the appellant (claimant) reached maximum medical improvement (MMI) on November 10, 2011; (2) the claimant had disability from November 11 through December 11, 2011; and (3) "[i]f not timely appealed to the Appeals Panel, the decision and order on issues 1 [the date of MMI] and 2 [disability] signed by the hearing officer, dated July 28, 2012, and mailed to the claimant on August 16, 2012, became final."

The claimant appealed the hearing officer's determination of the MMI date, contending that the designated doctor's report and opinion on MMI was flawed. The respondent (self-insured) responded that: the MMI date was correct; the claimant had not timely appealed a prior CCH decision of the hearing officer; and therefore the issues of MMI and disability became final.

DECISION

Reversed and rendered.

The evidence reflects that a prior CCH [Docket No.] was scheduled and held on July 12, 2012. It is undisputed the claimant did not attend the CCH. Because the claimant had not attended the CCH, the hearing officer wrote the claimant a "10-day letter" dated July 12, 2012, advising the claimant that she could contact the Texas Department of Insurance, Division of Workers' Compensation (Division) field office within 10 days of the date of the letter to request that the matter be reconvened to permit her to present evidence on the disputed issues and to show good cause why the claimant had failed to attend the July 12, 2012, CCH. The letter also advised the claimant that if she failed to respond to the 10-day letter a decision would be written which would likely be adverse to the claimant.

There is evidence that in the days following July 12, 2012, there was a failure of communication between the claimant and her ombudsman. Not having heard from the claimant, the hearing officer closed the record on July 28, 2012, CCH, and wrote his decision on July 28, 2012, and sent the decision to the Division's central office in Austin, Texas. The hearing officer's decision from the July 12, 2012, CCH was sent to the claimant on August 16, 2012.

The issues at the July 12, 2012, CCH were: (1) the date of MMI; and (2) did the claimant have disability from November 11 through December 11, 2011, as a result of the injury sustained on [date of injury]. The hearing officer, in that CCH, determined that the claimant reached MMI on November 10, 2011, and that the claimant did not have disability beginning November 11 and continuing through December 11, 2011. That decision and order was never appealed and therefore, the hearing officer's decision and order became final pursuant to Section 410.169.

The hearing officer did not have jurisdiction on the issues of MMI and disability from November 11 through December 11, 2011, at the September 12, 2012, CCH because those issues had previously been determined at the July 12, 2012, CCH and had not timely been appealed. Those determinations had become res judicata and the issues should not have been relitigated at the September 12, 2012, CCH. The hearing officer correctly found that the decision and order dated July 28, 2012, is final (as it was not timely appealed). The hearing officer was without jurisdiction to decide the issues of MMI and disability at the September 12, 2012, CCH as those issues were not timely appealed following receipt of the July 12, 2012, decision and order of the hearing officer.

We reverse the hearing officer's determination that for the time frame from November 11 through December 11, 2011, the claimant had disability and that the claimant reached MMI on November 10, 2011, from the September 12, 2012, CCH because the hearing officer did not have jurisdiction of those issues at the September 12, 2012, CCH. We render a new decision by striking the disability and MMI determinations because the hearing officer did not have jurisdiction of those issues at the September 12, 2012, CCH.

The true corporate name of the insurance carrier is **[a self-insured governmental entity]** and the name and address of its registered agent for service of process is

**[CORPORATION]
[ADDRESS]
[CITY, TEXAS ZIP].**

Thomas A. Knapp
Appeals Judge
CONCUR:

Cynthia A. Brown
Appeals Judge

Margaret L. Turner
Appeals Judge