

APPEAL NO. 122459
FILED FEBRUARY 11, 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 October 15, 2012, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) reached maximum medical improvement (MMI) on October 3, 2011, and that the claimant's impairment rating (IR) is zero percent. The claimant appealed, disputing the hearing officer's determinations of MMI and IR. The appeal file does not contain a response from the respondent (carrier).

DECISION

Reversed and remanded.

A CCH was held on October 15, 2012, to decide the disputed issues of MMI and IR. The claimant did not appear at the CCH and a 10-day letter dated October 16, 2012, was sent to the claimant at her last known address. The claimant failed to respond to the 10-day letter and the hearing officer closed the record on November 2, 2012. The hearing officer issued a decision on November 2, 2012, that was unfavorable to the claimant.

On appeal, the claimant states that she was evicted and without an address at the time the 10-day letter was sent. The 10-day letter is in the appeal file with a notation from the post office that the letter was unclaimed and unable to forward. A new address is noted for the claimant in her appeal. The claimant contends that she was unable to attend the CCH because she was looking for a place to live for herself and her children. She contends she was unable to respond to the 10-day letter since she did not receive it because at the time she did not have an address for mail to be delivered.

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 nonappearing party the opportunity to meaningfully participate in the dispute resolution process. In APD 020273, decided March 29, 2002, the 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, the claimant makes factual allegations that, if true, could constitute a basis for good cause for the claimant's failure to attend the CCH on October 15, 2012, or respond to the 10-day letter dated October 16, 2012.

The claimant requests that the case be remanded to the hearing officer to allow the claimant to meaningfully participate in the dispute resolution process. As in APD 020273, *supra*, the case is remanded to the hearing officer to take evidence concerning the claimant's allegations and to permit the parties to present evidence on the merits of the claim at the CCH on remand.

Accordingly, we reverse the hearing officer's determination that the claimant reached MMI on October 3, 2011, with a zero percent IR and we remand this case back to the hearing officer to allow the claimant an opportunity to participate in the dispute resolution process, and present evidence if she wishes to do so. As a separate issue, if the claimant does not appear at the CCH on remand (after notice of the CCH on remand is sent to the claimant's address of record), the hearing officer shall send a 10-day letter to the claimant's address of record and determine whether the claimant had good cause for not attending the CCH on remand.

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 Texas Department of Insurance, Division of Workers' Compensation, 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 **LIBERTY INSURANCE CORPORATION** 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.**

Margaret L. Turner
Appeals Judge

CONCUR:

Cynthia A. Brown
Appeals Judge

Thomas A. Knapp
Appeals Judge