

APPEAL NO. 141918
FILED NOVEMBER 3, 2014

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 July 14, 2014, in San Antonio, Texas, with [[hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the compensable injury of [Date of Injury], does not extend to disc degeneration at L1-2, L2-3, L3-4, and L4-5; (2) the appellant (claimant) reached maximum medical improvement (MMI) on August 21, 2013; and (3) the claimant's impairment rating (IR) is zero percent. The claimant did not attend the CCH held on July 14, 2014, nor did he respond to a 10-day letter dated that same date and mailed to the claimant's last known address. The claimant appealed, requesting that the case be remanded to the hearing officer to allow the claimant an opportunity to present evidence for the disputed issues. The respondent (carrier) responded, urging affirmance of the disputed extent of injury, MMI and IR determinations.

DECISION

Reversed and remanded.

A CCH was held on July 14, 2014, to decide the disputed issues of extent of injury, MMI and IR. The claimant did not appear at the CCH and a 10-day letter dated July 14, 2014, was sent to the claimant at his last known address. The claimant failed to respond to the 10-day letter and the hearing officer closed the record on July 29, 2014. The hearing officer issued a decision on August 1, 2014, that was unfavorable to the claimant.

On appeal, the claimant gave written permission for his sister to provide information on his behalf. The claimant's sister in his appeal, states the claimant was admitted to the hospital on June 11, 2014, and spent weeks in the intensive care unit. The claimant's sister stated the claimant has been in a nursing home since July 16, 2014, on hospice orders. Attached to the claimant's appeal was hospital discharge orders that indicated he had been released to a nursing home and referred for hospice assistance. The attached records indicated that the claimant was admitted to the hospital on June 11, 2014, and released to the nursing home on July 16, 2014.

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 July 14, 2014, or respond to the 10-day letter dated July 14, 2014. The hospital records attached to the claimant's appeal constitute newly discovered evidence pertaining to why the claimant did not attend the CCH on July 14, 2014, or respond to the 10-day letter dated July 14, 2014. See *Black v. Wills*, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ).

In this case, the hospital records were not available at the time of the CCH on July 14, 2014; it is not cumulative of other evidence in the record; it is not due to lack of diligence that it was not offered at the CCH; and it is so material that it would probably result in a different decision. The claimant has provided newly discovered evidence on appeal where a remand is warranted based on that evidence. See APD 100457, decided June 25, 2010. 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 determinations that: (1) the compensable injury of [Date of Injury], does not extend to disc degeneration at L1-2, L2-3, L3-4, and L4-5; (2) the claimant reached MMI on August 21, 2013; and (3) the claimant's IR is zero percent and we remand this case to the hearing officer to allow the claimant an opportunity to participate in the dispute resolution process, and present evidence if he wishes to do so.

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 **AMERICAN
COMPENSATION 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:

Veronica L. Ruberto
Appeals Judge

Carisa Space-Beam
Appeals Judge