

APPEAL NO. 013039  
FILED JANUARY 15, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on November 15, 2001. The hearing officer resolved the disputed issues by concluding that the respondent (claimant) had good cause for failing to attend the required medical examination (RME) on July 10, 2001, and is entitled to temporary income benefits from July 10, 2001, through August 23, 2001. The appellant (carrier) appealed asserting that it was error for the hearing officer to find good cause for the claimant's failure to attend the RME. The claimant responds, urging affirmance.

DECISION

Affirm.

This case involves the application of Section 408.004(e) and Rule 126.6(h), which provide that a carrier may suspend TIBs, during and for a period in which the employee fails to submit to an RME unless the Texas Workers' Compensation Commission determines that the employee had good cause for the failure to submit to the examination.

The parties stipulated that the claimant sustained a compensable injury on \_\_\_\_\_. The claimant testified that he did not receive notice of the RME examination scheduled for July 10, 2001. He testified that the mail delivery at his apartment complex was unreliable and that he did not open all of the mail he received because of the voluminous correspondence he received regarding collection of medical expenses. The evidence shows that the carrier sent the notice of the RME as required but the hearing officer was persuaded that the claimant was not aware of the RME appointment set for July 10, 2001. The evidence reflected that the claimant attended the RME on August 24, 2001. The claimant testified that his doctor told him that he was unable to work from July 10 through August 24, 2001.

Whether good cause exists is a matter left up to the discretion of the hearing officer, and the determination will not be set aside unless the hearing officer acted without reference to any guiding rules or principles. Texas Workers' Compensation Commission Appeal No. 002816, decided January 17, 2001, citing Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986). We have held that the appropriate test for good cause is that of ordinary prudence; that is, the degree of diligence an ordinarily prudent person would have exercised under the same or similar circumstances. Texas Workers' Compensation Commission Appeal No. 94244, decided April 15, 1994. In view of the evidence presented, we cannot conclude that the hearing officer abused his discretion in determining that the claimant had good cause for failing to attend the RME examination on July 10, 2001. Further, there was evidence to support the finding made by the hearing officer that during the period of July 10, 2001, through August 23, 2001, the claimant was unable to obtain and retain employment at preinjury wages as a result of the compensable injury of \_\_\_\_\_.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **REDLAND INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**C T CORPORATION SYSTEM  
811 DALLAS AVENUE  
HOUSTON, TEXAS 77002.**

Gary L. Kilgore  
Appeals Judge

CONCUR:

Judy L. S. Barnes  
Appeals Judge

Edward Vilano  
Judge