

APPEAL NO. 030524
FILED APRIL 3, 2003

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 February 5, 2003. The hearing officer determined that because the appellant (claimant) failed without good cause to submit to a Texas Workers' Compensation Commission (Commission)-ordered designated doctor examination on July 9, 2002, and did not do so until September 5, 2002, the respondent (carrier) was entitled to and could properly suspend the payment of temporary income benefits (TIBs) for the period beginning July 9 through September 4, 2002. The claimant appeals and the carrier responds, urging affirmance.

DECISION

Affirmed.

The hearing officer did not err in his determination that the claimant did not have good cause for failing to submit to the designated doctor examination on July 9, 2002, and therefore, the claimant was not entitled to TIBs for the period from July 9 through September 5, 2002. A new designated doctor was appointed and the claimant attended the appointment on September 5, 2002; thereafter, the carrier reinitiated TIBs. The applicable law on this issue is contained in Section 408.0041 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.6 (Rule 130.6)¹.

Section 408.0041(h) authorizes a carrier to suspend payment of TIBs during and for a period in which an employee fails to submit to a required designated doctor examination unless the Commission determines that the employee had good cause for failing to submit to the examination. Rule 130.6 provides in pertinent part that:

- (c) A carrier may suspend [TIBs] if an employee, without good cause, fails to attend a designated doctor examination.

* * * * *

- (2) If, after the carrier suspends TIBs pursuant to this section, the employee submits to the designated doctor examination, the carrier shall reinitiate TIBs as of the date the employee submitted to the examination unless the report of the designated doctor indicates that the employee has reached [maximum medical improvement].
- (3) An employee is not entitled to TIBs for a period during which the carrier suspended benefits pursuant to this section unless the

¹ The hearing officer inadvertently refers to Rule 126.6, the rule for Required Medical Exams rather than Rule 130.6, the rule for designated doctor exams.

employee later submits to the examination and the commission finds or the carrier determines that the employee had good cause for failure to attend the examination.

The claimant contends that he had good cause for missing the July 9, 2002, appointment with the designated doctor, claiming that a Commission employee told him he did not have to attend because the claimant had been approved to have surgery on July 22, 2002. After the carrier suspended TIBs, the claimant, as indicated by Dispute Resolution Information System (DRIS) notes, called the Commission on August 20, 2002, with a request to reset the appointment. The DRIS notes indicate that the claimant did not attend the examination because he had the "impression" after speaking with the adjuster that he did not have to attend. Contrary to the claimant's assertions, the DRIS notes do not reference a conversation with a Commission employee wherein the claimant was advised he did not have to attend that examination.

The hearing officer stated that he found "unpersuasive the Claimant's assertion that he was told by a Commission employee that he did not have to attend the designated doctor appointment on July 9, 2002." Finding that no Commission employee at any time advised the claimant that because of the pending surgery he did not have to attend the Commission-ordered examination on July 9, 2002, the hearing officer determined that the claimant failed to establish good cause.

Good cause is a question of fact for the hearing officer to resolve. Texas Workers' Compensation Commission Appeal No. 941656, decided January 26, 1995. The hearing officer, as finder of fact, is the sole judge of the weight and credibility that is to be given to the evidence. Section 410.165(a). The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Finding no abuse of discretion and no reversible error, we affirm the hearing officer's decision and order.

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

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Roy L. Warren
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge