

APPEAL NO. 032927  
FILED DECEMBER 9, 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 October 7, 2003. The hearing officer determined that the respondent (claimant) is entitled to temporary income benefits (TIBs) from July 9 through September 23, 2002, because he had good cause for failing to submit to the designated doctor's examination scheduled for July 8, 2002, i.e., the claimant did not receive notice of the appointment. The appellant (carrier) appeals this determination, essentially asserting that the claimant received notice or was deemed to receive notice of the scheduled designated doctor's examination. The claimant urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant is entitled to TIBs from July 9 through September 23, 2002, because he had good cause for failing to submit to the designated doctor's examination scheduled for July 8, 2002. Section 408.0041(h) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.6(c) (Rule 130.6(c)), provide that a carrier may suspend TIBs, during and for a period in which the employee fails to submit to a designated doctor's examination unless the Texas Workers' Compensation Commission determines that the employee had good cause for the failure to submit to the examination. We have said that the appropriate test for the existence of good cause is whether the claimant acted as a reasonably prudent person would have acted under the same or similar circumstances. Texas Workers' Compensation Commission Appeal No. 950397, decided April 27, 1995. The hearing officer found that the claimant did not receive notice of the appointment and the credible evidence did not show that such notice was sent to the claimant or his representative. In view of the evidence, we cannot conclude that hearing officer abused her discretion in determining that the claimant had good cause for failing to submit to the designated doctor's examination. Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986).

The decision and order of the hearing officer is affirmed.

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.**

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Edward Vilano  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Margaret L. Turner  
Appeals Judge