

APPEAL NO. 033116-s
FILED JANUARY 22, 2004

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 8, 2003. The appellant (claimant's attorney) did not appear at the CCH, and the hearing officer determined that he was entitled to attorney fees for Sequence Number 4 in the amount of zero dollars. In Texas Workers' Compensation Commission Appeal No. 032109, decided October 2, 2003, we reversed and remanded for further proceedings. A hearing on remand was scheduled on October 28, 2003, by cover letter attached to the Appeals Panel decision. No party appeared at the hearing on remand, and the hearing officer let stand his earlier decision. The claimant's attorney appeals, again asserting a lack of notice and opportunity to respond. The file does not contain a response from respondent 1 (claimant) or respondent 2 (carrier).

DECISION

Reversed and rendered.

As stated above, the claimant's attorney failed to appear at the original CCH on July 8, 2003. The hearing officer found that the claimant's attorney did not meet his burden of proof and issued a decision that he was entitled to attorney fees for Sequence Number 4 in the amount of zero dollars. The claimant's attorney appealed asserting a lack of notice and opportunity to respond. In Appeal No. 032109, *supra*, we reversed and remanded the hearing officer's decision for further proceedings. Our decision essentially required the hearing officer to issue a 10-day Show Cause Letter, in accordance with Texas Workers' Compensation Commission Appeal No. 960464, decided April 22, 1996. Although a hearing on remand was set by the Texas Workers' Compensation Commission's Division of Hearings and attached by cover letter to our decision, the record reflects that a 10-day Show Cause Letter was not issued. No parties appeared at the hearing on remand, and the hearing officer let stand his earlier decision.

The hearing officer erred in determining that the claimant's attorney is entitled to attorney fees for Sequence Number 4 in the amount of zero dollars. We have long required the issuance of a 10-day Show Cause Letter, when a party fails to appear for a scheduled CCH. See Texas Workers' Compensation Commission Appeal No. 962387, decided January 14, 1997; Appeal No. 960464, *supra* (which referred to a process in which a party was given 10 days to request an opportunity to show cause). The established procedure requires, at a minimum, that the hearing officer issue a 10-day Show Cause Letter which gives the nonattending party 10 days to request an opportunity to show cause for the failure to appear and request that the hearing be reconvened, or which "affirmatively sets" a new CCH, with written notice to all parties, for a show cause hearing followed immediately by a hearing on the merits of the certified issue(s). See *Id.* The 10-day Show Cause Letter should inform the

nonattending party that its failure to respond appropriately could result in an adverse decision. See Texas Workers' Compensation Commission Appeal No. 991155, decided July 15, 1999. Because the established procedure was not followed in this case, we reverse the hearing officer's determination and render a decision that the amount of attorney's fees for Sequence No. 4 cannot be determined at this time. To the extent that this decision is contrary to Texas Workers' Compensation Commission Appeal No. 032658, decided December 1, 2003, we retreat from that earlier decision.

The decision and order of the hearing officer is reversed and rendered.

The true corporate name of the insurance carrier is **TEXAS PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION for United Pacific Insurance Company, an impaired carrier** and the name and address of its registered agent for service of process is

**MARVIN KELLY
9120 BURNET ROAD
AUSTIN, TEXAS 78578.**

Edward Vilano
Appeals Judge

CONCUR:

Margaret L. Turner
Appeals Judge

DISSENTING OPINION:

I respectfully dissent. The claimant disputed attorney fees that were awarded to her attorney, the appellant in this case. A CCH was held on the matter of the disputed attorney fees. The claimant appeared at the CCH and presented her evidence, but the attorney failed to appear. The hearing officer ruled against the attorney. The attorney appealed and the Appeals Panel remanded the case to the hearing officer. The attorney was given a second opportunity to appear and present evidence on the disputed attorney's fees at a scheduled CCH on remand, but failed to appear. The notice setting the CCH on remand, which is in evidence, contains the attorney's correct address as shown in his appeal. The fact that a 10-day Show Cause Letter was not

sent to the attorney following the remand in this case should not, in my opinion, be the basis for vacating the hearing officer's decision on remand against the attorney where the attorney had the opportunity to appear at the CCH on remand but failed to avail himself of that opportunity. I fail to understand how the attorney receives the CCH decisions in timely fashion to appeal them, but says he does not receive the CCH set notices when both contain his office address. I would follow our decision in Texas Workers' Compensation Commission Appeal No. 032658, decided December 1, 2003, and affirm the hearing officer's decision on remand.

Robert W. Potts
Appeals Judge