

APPEAL NO. 050884  
FILED MAY 18, 2005

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 March 22, 2005. The hearing officer resolved the disputed issue by deciding that the appellant (claimant) is not entitled to reimbursement of travel expenses for medical treatment at the direction of Dr. T or Dr. L. The claimant appealed, contending that she did not attend the March 22, 2005, CCH because she did not get notification of the CCH. The appeal file does not contain a response from the respondent (self-insured).

DECISION

Reversed and remanded.

A CCH was scheduled for January 6, 2005, to determine whether the claimant was entitled to reimbursement of travel expenses for medical treatment at the direction of Dr. T and Dr. L, and, if so, in what amount. The self-insured attended the CCH but the claimant did not. The hearing officer sent the claimant a 10 day show cause letter regarding her failure to appear. The claimant responded to the letter, explaining that she was unable to attend the January 6, 2005, setting because her husband had a heart attack. The CCH was re-set for March 22, 2005. On that date, the self-insured again appeared but the claimant did not. The hearing officer noted that the claimant had the burden of proof to show that she should be reimbursed for her travel to be treated by Dr. T and Dr. L but that the claimant failed to present any evidence on the issue of reimbursement and therefore, failed to carry her burden of proof.

We have said that a hearing officer does not have authority to preclude a nonattending party from presenting evidence, "after a single failure to appear." Texas Workers' Compensation Commission Appeal No. 962387, decided January 14, 1997. Rather, 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 Texas Workers' Compensation Commission Appeal No. 033116-s, decided January 22, 2004. In Texas Workers' Compensation Commission Appeal No. 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. Should a party fail to appear for the next hearing, after adequate notice has been given, the hearing officer could then issue a decision. See Texas Workers' Compensation Commission Appeal No. 991155, decided July 15, 1999. The record, in this case, shows that: a CCH was convened on January 6, 2005; that the claimant failed to appear or request a

continuance; that a 10-day show cause letter was mailed to the claimant; and that the claimant responded and was found to have good cause for her failure to attend.

The claimant contends in her appeal that she never received any notice of the March 22, 2005, setting. There is nothing in the record to establish that notice of the March 22, 2005, CCH, was sent to the claimant. Because there is no evidence that adequate notice of the March 22, 2005, CCH was given to the claimant and the claimant now contends she did not receive notification of the March setting, we reverse the determination that the claimant is not entitled to reimbursement of travel expenses for medical treatment at the direction of Dr. T and Dr. L and remand back to the hearing officer. On remand, the hearing officer should make a determination of whether the claimant had good cause for her failure to attend the March 22, 2005, CCH and afford both parties the opportunity to present evidence on the disputed issue.

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 Workers' Compensation Commission's Division of Hearings, 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.

The true corporate name of the insurance carrier is **STATE OFFICE OF RISK MANAGEMENT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

For service in person the address is:

**JONATHAN BOW, EXECUTIVE DIRECTOR  
STATE OFFICE OF RISK MANAGEMENT  
300 W. 15TH STREET  
WILLIAM P. CLEMENTS, JR.  
STATE OFFICE BUILDING, 6TH FLOOR  
AUSTIN, TEXAS 78701.**

For service by mail the address is:

**JONATHAN BOW, EXECUTIVE DIRECTOR  
STATE OFFICE OF RISK MANAGEMENT  
P.O. BOX 13777  
AUSTIN, TEXAS 78711-3777.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Robert W. Potts  
Appeals Judge