

APPEAL NO. 070647-s
FILED JULY 18, 2007

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 December 18, 2006. The hearing officer resolved the disputed issue by deciding that respondent 1's (claimant) compensable injury of _____, does not extend to include cellulitis and infected blisters of the left foot. The appellant (subclaimant 2) appealed the hearing officer's extent-of-injury determination stating that it did not receive notification of a CCH although it received a copy of the hearing officer's decision and order. Subclaimant 2 attached to its appeal a copy of a statement for medical services rendered on July 1, 2006, for the claimant's injury. The appeal file does not contain a response from the claimant, respondent 2 (carrier), or respondent 3 (subclaimant 1).

DECISION

Reversed and remanded.

FACTUAL SUMMARY

The CCH was scheduled for December 18, 2006, and was held on that date. The carrier and subclaimant 1 were present. The claimant and subclaimant 2 did not appear at the CCH, and the hearing officer sent a 10-day letter to the claimant by certified mail. A Dispute Resolution Information System (DRIS) note dated January 11, 2007, shows that subclaimant 2 was added as a subclaimant party to the claim. The Texas Department of Insurance, Division of Workers' Compensation (Division) records indicated that the record for the CCH closed on January 19, 2007. The hearing officer issued a decision on January 23, 2007. The hearing officer notes in the Background Information section that no response from the claimant was received and that "[t]he [subclaimant 1] declared that it does not wish to pursue this claim." The hearing officer did not make a finding with regard to subclaimant 2. The hearing officer found that: (1) the claimant failed to appear for the December 18, 2006, CCH and did not respond to the Division's letter offering him an opportunity to have the hearing rescheduled; (2) the [subclaimant 1] does not wish to pursue this claim; (3) no evidence was received that showed that the claimant's compensable injury of _____, extended to include cellulitis and infected blisters of the left foot; and (4) no evidence was received that showed that the claimant had good cause for his failure to appear for the CCH. The hearing officer determined that the claimant's compensable injury of _____, does not extend to include cellulitis and infected blisters of the left foot. Division records indicate that the hearing officer's decision was mailed to the claimant (at his correct address), the carrier, subclaimant 1, and subclaimant 2 on February 1, 2007.

SUBCLAIMANT 2

Subclaimant 2 contends that it did not receive notice of a CCH, however, it received a copy of the hearing officer's decision and order. The CCH notice letter dated October 10, 2006, indicates that it was sent to the claimant, carrier, and subclaimant 1. There is no indication that the CCH notice was sent to subclaimant 2. As previously mentioned, a DRIS note dated January 11, 2007, indicated that subclaimant 2 was added as a subclaimant party to the claim; therefore, subclaimant 2 would not have received a notice of the December 18, 2006, CCH. In addition to the DRIS note of January 11, 2007, another DRIS note dated May 11, 2007 (Review CCH Other Party Data) indicates that subclaimant 2 is listed as one of two subclaimants in this case. 28 TEX. ADMIN. CODE § 140.1(4) (Rule 140.1(4)) defines "Party to a proceeding" as "[a] person entitled to take part in a proceeding because of a direct legal interest in the outcome." Rule 141.1(a) provides that a benefit review conference may be requested "by a claimant, a sub-claimant, a carrier, or an employer who has contested compensability." In Appeals Panel Decision (APD) 002026, decided October 16, 2000, the Appeals Panel noted that it has allowed health care providers to be subclaimant parties in a number of cases. See APD 980395, decided April 6, 1998; APD 962422, decided January 6, 1997.

In the instant case, subclaimant 2 is a party to the proceeding as having a direct legal interest in the outcome because subclaimant 2 contends that it rendered medical services to the claimant for his injury on July 1, 2006, and that it has documentation to show that the claimant's compensable injury extends to include the conditions in dispute. Subclaimant 2 was added as a party subclaimant on January 11, 2007, prior to the date the record closed on January 19, 2007. Subclaimant 2 did not have the opportunity to participate in the dispute resolution process to present evidence on the disputed extent-of-injury issue. Accordingly, we reverse the hearing officer's extent-of-injury determination and we remand this case back to the hearing officer to allow subclaimant 2 the opportunity to participate in the dispute resolution process, and present evidence if it wishes to do so.

10-DAY LETTER

The appeal file contains a copy of the 10-day letter dated December 18, 2006, that was sent to the claimant and the original sealed envelope containing the original 10-day letter that was sent by the hearing officer via certified mail. Attached to the copy of the 10-day letter is a United States Postal Service certified receipt form and attached to the original envelope is a United States Postal Service certified mail return receipt form or "green card" with the claimant's name and address. The tracking numbers for both the certified mail receipt form and the green card correlate.

Division records (specifically, Texas Compass Claim/Claimant Summary) indicate that the claimant notified the Division of a change of address on November 9, 2006. The appeal file shows that the 10-day letter dated December 18, 2006, and the envelope sent by the hearing officer via certified mail lists a different address from the new address of record. The envelope contains the following stamps: "UNCLAIMED 12/20/06"; and "2nd Notice 01/01/06." Also, a postal service sticker dated "01/11/07"

states "RETURN TO SENDER UNCLAIMED UNABLE TO FORWARD." In APD 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. In the instant case, the claimant did not have the opportunity to show good cause why he failed to attend the CCH because the 10-day letter was sent to a different address than the new address of record. Accordingly, we remand this case back to the hearing officer to allow the claimant an opportunity to participate in the dispute resolution process, and present evidence if he wishes to do so. As a separate issue, if the claimant does not appear at the CCH on remand (after notice of the CCH on remand is sent to the claimant's address of record), the hearing officer shall send a 10-day letter to the address of record and determine whether the claimant had good cause for not attending the CCH on remand.

SUMMARY

We reverse the hearing officer's determination that the compensable injury of _____, does not extend to include cellulitis and infected blisters of the left foot, and we remand this case back to the hearing officer to allow the parties the opportunity to present evidence on the disputed issue consistent with this decision.

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 Division, 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. See Appeals Panel Decision 92642, decided January 20, 1993

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

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 330
AUSTIN, TEXAS 78701.**

Veronica L. Ruberto
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Margaret L. Turner
Appeals Judge