

APPEAL NO. 130301  
MARCH 26, 2013

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 19, 2012, with the record closing on January 3, 2013, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the appellant (claimant) reached maximum medical improvement (MMI) on October 6, 2011; (2) the claimant's impairment rating (IR) is zero percent; and (3) the claimant did not have good cause for failing to appear at the scheduled CCH on December 19, 2012. The claimant appealed, disputing the hearing officer's determinations of MMI, IR, and that he did not have good cause for failing to appear at the December 19, 2012, CCH. The respondent (self-insured) responded, urging affirmance of the disputed determinations.

DECISION

Reversed and remanded.

The claimant did not attend the CCH scheduled for December 19, 2012. The hearing officer recited on the record that he would send a 10-day letter to the claimant and he did so admitting the letter as a hearing officer exhibit. The 10-day letter is dated December 19, 2012, and states that the claimant may contact the field office within 10 days of the date of the letter to request that the hearing be reconvened to permit the claimant to present evidence on the disputed issues and to show good cause why he failed to attend the CCH. The letter is addressed to the claimant at [address]. The claimant argues in his appeal that both the notice of the CCH and the 10-day letter were sent to the wrong address. Attached to the claimant's appeal are dispute resolution information system (DRIS) notes which document that the claimant called the Texas Department of Insurance, Division of Workers' Compensation (Division) on November 13, 2012, to notify the Division that the claimant's address changed from [address] to a new address [address].

In Appeals Panel Decision (APD) 042634, decided November 29, 2004, the Appeals Panel noted that the purpose of the 10-day letter process is to give the non-appearing party the opportunity to meaningfully participate in the dispute resolution process. In APD 020273, decided March 29, 2002, a claimant made a number of factual allegations in her appeal regarding good cause for failing to attend the CCH and her attempts to respond to the 10-day letter, and the Appeals Panel stated that it was not in a position to evaluate the credibility of the claimant in regard to those matters and thus, remanded the case to the hearing officer to take evidence concerning the

claimant's allegations and to permit the claimant to present evidence on the merits of her claim at the CCH on remand.

In the instant case, the claimant makes factual allegations that if true, could constitute a basis for the claimant's failure to attend the December 19, 2012, CCH. The attached Division records indicate that the 10-day letter was sent to the claimant at the wrong address. The DRIS notes attached to the claimant's appeal constitute newly discovered evidence pertaining to why the claimant did not attend the CCH on December 19, 2012, or respond to the 10-day letter dated December 19, 2012. See *Black v. Wills*, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ).

Accordingly, we reverse the hearing officer's determinations that: (1) the claimant reached MMI on October 6, 2011; (2) the claimant's IR is zero percent; and (3) the claimant did not have good cause for failing to appear at the scheduled CCH on December 19, 2012. We remand the disputed issues to the hearing officer to allow the claimant an opportunity to participate in the dispute resolution process and allow the parties to present evidence on the disputed issues. The hearing officer is then to make a determination on the issues before him 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 APD 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **[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:

**[NAME]  
[ADDRESS]  
[CITY, TEXAS ZIP].**

For service by mail the address is:

**[NAME]  
[ADDRESS]  
[CITY, TEXAS ZIP].**

Margaret L. Turner  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Carisa Space-Beam  
Appeals Judge