

APPEAL NO. 181682
FILED SEPTEMBER 12, 2018

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 June 12, 2018, with the record closing on June 28, 2018, in (city), Texas, with (administrative law judge) presiding as the administrative law judge (ALJ). The ALJ resolved the disputed issues by deciding that: (1) the appellant (claimant) reached maximum medical improvement (MMI) on November 29, 2017; and (2) the claimant's impairment rating (IR) is one percent. The claimant appealed the ALJ's determinations. The claimant requests that the CCH be reconvened to permit him to present evidence concerning the disputed issues and contends that he never received any notice regarding the CCH. The appeal file does not contain a response from the respondent (carrier) to the claimant's appeal.

DECISION

Reversed and remanded.

The carrier stipulated, in part, that the claimant sustained a compensable injury on (date of injury), in the form of a left hand strain/contusion and a left wrist strain/contusion. A CCH was called to order on June 12, 2018, to hear the disputed issues. The carrier was present; however, the claimant did not appear for the CCH. The claimant's ombudsman announced on the record that despite several attempts to contact the claimant via telephone, mail, and email he received no response from the claimant.

Due to the claimant's nonattendance at the CCH, the ALJ issued a 10-day letter dated June 13, 2018, to the claimant; however, the claimant did not respond. The ALJ closed the record on June 28, 2018, and issued a decision on July 3, 2018. Records from the Texas Department of Insurance, Division of Workers' Compensation (Division) reflect that the Division contacted the claimant to confirm his address, and that the claimant informed the Division it had omitted the trailer number from his address. Division records also reflect that mail sent to the claimant was returned to the Division as undeliverable.

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, the 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 for such reason, remanded the case to the ALJ 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 this case, the claimant makes factual allegations that, if true, could constitute a basis for good cause for the claimant's failure to attend the CCH on June 12, 2018. As in APD 020273, *supra*, the case is remanded to the ALJ to take evidence concerning the claimant's allegations and to permit the parties to present evidence on the merits of the claim at the CCH on remand.

Accordingly, we reverse the ALJ's determinations that the claimant reached MMI on November 29, 2017, and that the claimant's IR is one percent, and we remand this case to the ALJ to allow the claimant an opportunity to participate in the dispute resolution process and present evidence if he wishes to do so on both of the issues.

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 ALJ, 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 **AMERICAN ZURICH INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701.**

Carisa Space-Beam
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge