

APPEAL NO. 190213
FILED MARCH 21, 2019

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 November 13, 2018, with the record closing on December 18, 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) did not sustain a compensable injury on (date of injury); and (2) the respondent (carrier) did not waive the right to contest the compensability of the (date of injury), claimed injury because it timely contested compensability in accordance with Section 409.021. The claimant appealed, disputing the ALJ's determinations of compensability and waiver. The carrier responded, urging affirmance of the disputed compensability and waiver determinations.

DECISION

Reversed and remanded.

The claimant, although represented by an attorney, did not appear at the scheduled CCH. At the CCH, documentary evidence was offered by the claimant's attorney. The ALJ initially stated she would send the claimant a 10-day letter but subsequently stated that she did not feel it was necessary to do so. There is no evidence that the ALJ sent a 10-day letter to the claimant. 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. The Appeals Panel has long held that if a party does not attend the CCH a 10-day letter must be sent to the party who did not attend.

Accordingly, because the ALJ failed to issue a 10-day letter to the claimant after his non-appearance at the scheduled CCH, we reverse the ALJ's determinations that the claimant did not sustain a compensable injury on (date of injury), and that the carrier did not waive the right to contest the compensability of the (date of injury), claimed injury because it timely contested compensability in accordance with Section 409.021. We remand this case to the ALJ to allow the claimant to present evidence concerning whether he had good cause for his failure to attend the November 13, 2018, CCH and to present evidence relevant to the disputed issues.

We note that 28 TEX. ADMIN. CODE § 142.11 (Rule 142.11) regarding the failure to attend a CCH was amended to be effective January 7, 2019. However, the

CCH in this case was held on November 13, 2018, prior to the effective date of Rule 142.11 as amended.

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 Texas Department of Insurance, Division of Workers' Compensation, 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 **ACCIDENT FUND INSURANCE COMPANY OF AMERICA** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
1999 BRYAN STREET, SUITE 900
DALLAS, TEXAS 75201-3136.**

Margaret L. Turner
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Carisa Space-Beam
Appeals Judge