

APPEAL NO. 201401  
FILED NOVEMBER 6, 2020

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 July 29, 2020, with the record closing on August 24, 2020, 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 compensable injury sustained on (date of injury), does not extend to L4-5 and L5-S1 disc herniations; (2) the appellant (claimant) reached maximum medical improvement (MMI) on March 15, 2018; and (3) the claimant's impairment rating (IR) is zero percent. The claimant appealed, disputing the ALJ's determinations of extent of injury, MMI, and IR. The claimant contends on appeal that he did not receive any notices of the scheduled proceedings. The respondent (carrier) responded, urging affirmance of the disputed extent of injury, MMI, and IR determinations.

DECISION

Reversed and remanded.

The carrier affirmed as true and correct the ALJ's finding of fact that the claimant sustained a compensable injury on (date of injury), in the form of at least a lumbar sprain/strain. A CCH was called to order on July 29, 2020, 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 the claimant did not make contact with the Office of Injured Employee Counsel and she asked to be excused from the proceeding.

Due to the claimant's nonattendance at the CCH, the ALJ issued a 10-day letter dated August 3, 2020, to the claimant; however, the claimant did not respond. The ALJ closed the record on August 24, 2020, and issued a decision on August 26, 2020. A review of the record reflects that the Decision and Order was sent to the claimant at an address in (city), Texas. However, the 10-day letter was sent to the claimant at a different address in (city), Texas. The record does not reflect that the claimant changed his address during the time period from the mailing of the 10-day letter and the mailing of the decision and order.

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 nonappearing 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.

28 TEX. ADMIN. CODE § 142.11 (Rule 142.11) regarding the failure to attend a CCH was amended to be effective January 7, 2019. Rule 142.11(c) provides, in part, that if the ALJ determines that good cause exists for the failure to attend, the hearing will be rescheduled.

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 July 29, 2020. See APD 020273, *supra*. The case is remanded to the ALJ to consider whether the claimant had good cause for failing to attend the CCH. If good cause is found, the ALJ is 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 compensable injury of (date of injury), does not extend to an L4-5 disc herniation or an L5-S1 disc herniation; the claimant reached MMI on March 15, 2018; and the claimant's IR is zero percent, and we remand this case to the ALJ to take evidence concerning the claimant's nonappearance at the CCH and, if good cause is found, to allow for the presentation of evidence on the merits of the claim. The ALJ is then to make a determination on the disputed issues of extent of injury, MMI, and IR.

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 **NEW HAMPSHIRE 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 78701-3218.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Cristina Beceiro  
Appeals Judge

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Carisa Space-Beam  
Appeals Judge