

APPEAL NO. 210137
FILED MARCH 18, 2021

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 September 15, 2020, and December 10, 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 claimed injury was caused by the appellant's (claimant) attempt to unlawfully injure another person, thereby relieving the respondent (self-insured) of liability for compensation; and (2) the self-insured's contest of compensability was based on newly discovered evidence that could not reasonably have been discovered at an earlier date, thus allowing the self-insured to reopen the issue of compensability.

The claimant appealed the ALJ's decision, contending that he was unable to attend the December 10, 2020, CCH because "he had been receiving medical care and heart surgery and was unaware [of] the proceeding and given no opportunity to explain his absence. . . ." The self-insured responded, urging affirmance of the ALJ's decision.

DECISION

Reversed and remanded.

A CCH was called to order on September 15, 2020, to hear the disputed issues. The self-insured was present; however, the claimant did not appear for the CCH. Due to the claimant's nonattendance at the CCH, the ALJ issued a 10-day letter dated September 17, 2020, to the claimant. The claimant responded, and the ALJ issued an Order Regarding Failure to Attend Hearing (Order) on October 21, 2020, in which she determined there was good cause for the claimant's failure to attend the September 15, 2020, CCH, and stated that the case be rescheduled for December 10, 2020. We note that although the style on the Order reflects the correct docket number it does not contain the claimant's correct name; instead, the Order lists the name of a completely unrelated person.

The CCH was called to order on December 10, 2020. The self-insured was present but the claimant did not appear for this setting of the CCH. The claimant's ombudsman announced on the record that she attempted to contact the claimant on November 20, 2020, for a prep appointment but his voicemail was full. The self-insured urged the ALJ to not send the claimant another 10-day letter and instead issue a decision and order because the case had been reset several times. The ALJ closed the record on December 10, 2020, and issued a decision and order that she signed on December 16, 2020, and was sent to the parties on December 30, 2020. The ALJ

specifically found that the claimant was properly notified of the December 10, 2020, CCH, and that he failed to show good cause for failing to appear at that CCH. We disagree. Although the October 21, 2020, Order notifying the parties that the CCH was rescheduled for December 10, 2020, indicates it was sent to the claimant's correct address, the Order lists a completely different person as the claimant to appear at the CCH. Given that the Order did not identify the actual claimant as the claimant to appear at the CCH, we do not believe the claimant received proper notice of the December 10, 2020, CCH setting. We remand this case 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 determination that: (1) the claimed injury was caused by the claimant's attempt to unlawfully injure another person, thereby relieving the self-insured of liability for compensation; and (2) the self-insured's contest of compensability was based on newly discovered evidence that could not reasonably have been discovered at an earlier date, thus allowing the self-insured to reopen the issue of compensability. We remand this case to the ALJ to take evidence concerning the claimant's nonappearance at the December 10, 2020, 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 determinations on the disputed issues of whether the claimed injury was caused by his attempt to unlawfully injure another person thereby relieving the self-insured of liability for compensation, and whether the self-insured's contest of compensability was based on newly discovered evidence that could not reasonably have been discovered at an earlier date, thus allowing the self-insured to reopen the issue of compensability.

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 Appeals Panel Decision 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **CITY OF HOUSTON (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**PAT J. DANIEL, INTERIM – CITY SECRETARY
900 BAGBY
HOUSTON, TEXAS 77002.**

Carisa Space-Beam
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Margaret L. Turner
Appeals Judge