

APPEAL NO. 210196
FILED APRIL 7, 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 December 30, 2020, with the record closing on January 19, 2021, 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 of (date of injury), does not extend to a lumbar disc bulge at L4-5 or L5-S1 or lumbar radiculopathy; (2) the appellant (claimant) reached maximum medical improvement (MMI) on June 28, 2018; and (3) the claimant's impairment rating (IR) is zero percent. The claimant appealed the ALJ's decision. The respondent (carrier) responded, urging affirmance of the ALJ's decision.

DECISION

Reversed and remanded.

A CCH was called to order on December 30, 2020, to hear the disputed issues. The carrier was present, and although the claimant's attorney appeared for the CCH the claimant did not. Due to the claimant's nonattendance at the CCH, the ALJ issued a 10-day letter dated December 30, 2020, to the claimant. On January 19, 2021, the ALJ issued a decision and order because the "[c]laimant failed to timely respond in writing to the 10-day letter. . . ." We note the carrier stipulated at the CCH that (Dr. W) was appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division) to determine MMI, IR, and extent of the claimant's compensable injury. However, the stipulation as written in Finding of Fact No. 1.E. omits Dr. W being appointed to determine extent of injury.

The claimant through his attorney appealed the ALJ's decision. The claimant's appeal states that the claimant's attorney responded on January 4, 2021, to the 10-day letter on the claimant's behalf by forwarding to the Division an email the attorney received from the claimant regarding his absence at the December 30, 2020, CCH. The claimant's appeal also states that the claimant's attorney sent a copy of the claimant's email via facsimile transmission (fax) to the Division on January 4, 2021, and includes a fax confirmation sheet confirming that this fax containing a copy of the claimant's email was sent to a correct Division fax number on that same date.

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 presented evidence that he did in fact respond timely to the 10-day letter regarding his absence from the December 30, 2020, CCH. Therefore, we remand this case to the ALJ to consider whether the claimant had good cause for failing to attend the December 30, 2020, 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 a lumbar disc bulge at L4-5 or L5-S1 or lumbar radiculopathy; the claimant reached MMI on June 28, 2018; and the claimant's IR is zero percent. We remand this case to the ALJ to take evidence concerning the claimant's nonappearance at the December 30, 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 compensable injury of (date of injury), extends to a lumbar disc bulge at L4-5 and/or L5-S1, 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 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 **ZURICH AMERICAN 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.**

Carisa Space-Beam
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Margaret L. Turner
Appeals Judge