

APPEAL NO. 220552
FILED MAY 31, 2022

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 January 31, 2022, with the record closing on February 22, 2022, 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 April 7, 2021; and (2) the claimant's impairment rating (IR) is zero percent. The claimant appealed, disputing the ALJ's determinations of MMI and IR. The claimant contends on appeal that he has been having trouble with his mail and was unable to respond to the 10-day letter or attend the CCH on January 31, 2022. The respondent (self-insured) filed a response, urging affirmance of the disputed issues.

DECISION

Reversed and remanded.

The evidence reflects that the claimant was injured on (date of injury), while he was in an employee shuttle and the driver ran into a telephone pole. The self-insured stipulated that the claimant sustained a compensable injury in the form of a lumbar sprain/strain and bilateral leg contusions on (date of injury). On January 31, 2022, a CCH was called to order to hear the disputed issues. The claimant did not appear at the CCH, and a 10-day letter was sent to the claimant. The claimant failed to respond to the 10-day letter and the ALJ closed the record on February 22, 2022. A decision was issued on March 8, 2022, that was unfavorable to the claimant on the issues before her. In her discussion of the case in the decision and order, the ALJ stated that she mailed a 10-day letter to the claimant. A 10-day letter dated January 31, 2022, is in the hearing file and was mailed to the claimant at the following address: (address 1). However, the decision and order was mailed to the claimant at the following address: (address 2). The record reflects that this is the claimant's correct address of record.

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 thus, 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.

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 evidence indicates that the January 31, 2022, 10-day letter was not mailed to the claimant's correct address of record. Therefore, we remand this case to the ALJ to consider whether the claimant had good cause for failing to attend the January 31, 2022, CCH. See APD 201401, decided November 6, 2020. 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 claimant reached MMI on April 7, 2021, 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 January 31, 2022, 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 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 **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

(NAME)
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

Cristina Beceiro
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge