

APPEAL NO. 002932-S

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 30, 2000, in (city 1). The hearing officer determined that the appellant (claimant) was not entitled to reimbursement for travel expenses for medical treatment because the claimant had failed to comply with Section 410.161.

The claimant appealed, contending that she had complied with Section 410.161 to the best of her ability, that all the relevant information had been properly exchanged and requests reversal of the hearing officer's decision. The respondent (carrier) responds, urging affirmance.

DECISION

Reversed and remanded.

This case involves reimbursement of travel expenses for medical treatment. A benefit review conference (BRC) was held on October 2, 2000, where the disputed issue was recited, and both the claimant's and the carrier's position was set out in detail. The benefit review officer (BRO), in making his recommendation, sets out what he believes the applicable law is and recommends a finding in favor of the claimant. Subsequently, the carrier filed interrogatories with the claimant on October 23, 2000. The first 11 questions are the Texas Workers' Compensation Commission (Commission) standard interrogatories. Questions 12 and 13 ask the claimant to "state why it was reasonably necessary" for the claimant to travel to Dr. P's office in city 1 and Dr. H's office in city 2. The claimant timely answered the interrogatories, stating:

Claimant objects to the form of the question on the grounds that the question improperly states the burden of proof in this matter.

No Motion to Compel Answers to Interrogatories was filed and in fact the carrier's counsel at the CCH stated "I am aware of this hearing officer's position with regard to motions to compel answers to interrogatories so I didn't file one." At the CCH, the carrier objected to all of the claimant's exhibits and the claimant's testimony on the disputed issue based on the "claimant's refusal to properly and completely answer the interrogatories" citing Section 410.161. (The carrier conceded that the claimant's exhibits were exchanged and "were properly provided to us previously.") The hearing officer sustained the carrier's objection and went so far as to exclude the claimant's testimony regarding where she lived and where she worked on _____, the date of injury. The hearing officer, in his Statement of the Evidence, gave his rationale, commenting:

The policy of the legislature in establishing the new workers' compensation law in 1991 included full and open disclosure of information by the parties in advance of hearings. Accordingly, the legislature included Section 410.161

with its sanctions. Those sanctions are harsh, but necessary. Without required disclosure of information in advance, the system costs of discovery would exceed the benefits to be obtained by injured workers.

Section 410.161 provides that:

A party who fails to disclose information known to the party or documents that are in the party's possession, custody, or control at the time disclosure is required by Sections 410.158-410.160 may not introduce the evidence at any subsequent proceeding before the commission or in court on the claim unless good cause is shown for not having disclosed the information or documents under those sections.

The carrier and hearing officer cite Sections 410.158 to 410.161, however, no reference is made to Section 410.158(b) which states:

- (b) Discovery under Subsection (a) may not seek information that may readily be derived from documentary evidence described in Section 410.160. Answers to discovery under Subsection (a) need not duplicate information that may readily be derived from documentary evidence described in Section 410.160.

In the present case, it is undisputed that the claimant's exhibits were properly and timely exchanged and as previously noted, the parties' positions, as well as the BRO's application of those positions, were discussed in great detail in the BRC report. It appears completely disingenuous to us for the carrier to represent that the interrogatories were necessary to obtain information that was not available at the BRC, or that could not be readily derived from documentary evidence which the carrier readily concedes was properly and timely exchanged. We can only speculate regarding the real purpose for the carrier's interrogatories and its failure to put the claimant on notice that it believed the answers were inadequate through a motion to compel. Interrogatories should not be used, nor sanctions applied, to exclude information otherwise disclosed or to prevent a claimant from testifying.

The carrier, in its response, cites several Appeals Panel decisions to support its position; however, we note that in Texas Workers' Compensation Commission Appeal No. 990697, decided May 17, 1999, we held that a hearing officer had not abused her discretion in allowing exhibits and the claimant's testimony over the carrier's objection that the claimant in that case had not responded to interrogatories citing Texas Workers' Compensation Commission Appeal No. 982829, decided January 15, 1999, which the carrier in this case also cites. Appeal 982829 discusses not only Section 410.161, but also Section 410.158(b) and commented that "the carrier is seeking to exclude broad subject areas from testimony just because these subjects were raised in an interrogatory" That case went on to note the fine line between what had previously been disclosed (in this case at the BRC and through the exhibits) and matters not previously disclosed. Appeal No. 982829, citing extensively from another Appeals Panel

decision, commented that Texas Workers' Compensation Commission Appeal No. 951136, decided August 28, 1995, held that "interrogatories must be directed at information not exchanged or disclosed" and that Texas Workers' Compensation Commission Appeal No. 93629, decided September 10, 1993, stated that "the failure to answer interrogatories could not be used to exclude evidence that was required to be exchanged."

Appeal No. 982829 cited extensively from another Appeals Panel decision where the claimant had disregarded the carrier's interrogatories altogether and nonetheless we affirmed the hearing officer's decision allowing the claimant to testify. In this case, the claimant (unwisely) attempted to answer the interrogatories to the best of her ability (the hearing officer said that was not "good enough"). We also note that Section 410.165(a) provides that conformity to the legal rules of evidence is not necessary.

Accordingly, we find that the hearing officer abused his discretion in excluding the claimant's properly exchanged exhibits and her testimony. We reverse the hearing officer's decision and remand the case for a rehearing on remand. The hearing officer is to admit and consider all exhibits which were properly and timely exchanged and the claimant is to be allowed to testify consistent with her position enunciated at the BRC. The hearing officer is then to make a decision on the merits.

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 hearing officer, 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 Commission's Division of Hearings, pursuant to Section 410.202. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

Thomas A. Knapp
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Gary L. Kilgore
Appeals Judge