

APPEAL NO. 240440
FILED MAY 8, 2024

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 February 20, 2024, with the record closing on March 12, 2024, 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 anterior talofibular ligament tear of left ankle, left foot infection and cellulitis, or left foot amputation; (2) the appellant (claimant) reached maximum medical improvement (MMI) on February 18, 2022; and (3) the claimant's impairment rating (IR) is zero percent. The claimant appealed, disputing the ALJ's determinations. The claimant did not attend the CCH, nor did she respond to a 10-day letter. The claimant contends on appeal that she did not receive information about the CCH because it was sent to an old address. The respondent (self-insured) responded, urging affirmance of the disputed issues.

DECISION

Reversed and remanded.

The evidence reflects the claimant was injured on (date of injury), when she twisted her left ankle. The parties present stipulated, in part, that the claimant sustained a compensable injury on (date of injury), that extends to at least a left ankle sprain, and that the date of statutory MMI is December 8, 2023.

A CCH was set for January 16, 2024, but was reset. The CCH set notice and Benefit Review Conference report in evidence is dated December 1, 2023, and was sent to the claimant at (Address), (City), Texas (Zip code). On February 20, 2024, a CCH was called to order to hear the disputed issues. We note the set notice for this CCH is not in evidence. The claimant did not appear at the CCH, and a 10-day letter dated February 20, 2024, was sent to the claimant at (Address), (City), Texas (Zip Code). The claimant did not respond to the 10-day letter. On appeal the claimant contends she did not receive the CCH information because it was sent to an old address, and her correct address is (Address), (City), Texas (Zip Code). The evidence does not establish why the claimant's correct address was used for the January 16, 2024, CCH set notice, but not for the 10-day letter informing the claimant she had missed the February 20, 2024, CCH.

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. See *also* APD 220552, decided May 31, 2022.

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 is unclear why the February 20, 2024, 10-day letter was not mailed to the claimant at what she contends is her correct address when that address was used on the January 16, 2024, set notice. Under the circumstances in this case, we remand this case to the ALJ to consider whether the claimant had good cause for failing to attend the February 20, 2024, 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 compensable injury of (date of injury), does not extend to anterior talofibular ligament tear of left ankle, left foot infection and cellulitis, or left foot amputation; the claimant reached MMI on February 18, 2022; 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 February 20, 2024, 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 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 **(a certified self-insured)** and the name and address of its registered agent for service of process is

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

Carisa Space-Beam
Appeals Judge

CONCUR:

Cristina Beceiro
Appeals Judge

Margaret L. Turner
Appeals Judge