

APPEAL NO. 92450

On July 22, 1992, a contested case hearing was held in (city), Texas, with (hearing officer) presiding, to consider the issues of whether the claimant, (claimant), the respondent herein, was injured in the course and scope of her employment on (date of injury) while employed in a clerical position by the (W), (S), and (employer); whether she had any disability from this injury; whether the sole cause of any disability and need for medical treatment was a 1986 compensable injury; and whether she gave her employer timely notice of her injury (a repetitive trauma injury) to her employer. The hearing officer determined that the respondent sustained a repetitive trauma injury that began in August 1988 and continued through December 5, 1991; that she had disability as a result of such injury; that her prior injury was not the sole cause of her disability; but that she did not give timely notice of her injury to her employer, as required by the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-5.01 (Vernon's Supp. 1992) (1989 Act) and that the employer did not have actual knowledge of her injury prior to her filing of a claim for compensation on April 28, 1992. The hearing officer therefore determined that the appellant was relieved of liability and ordered not to pay any benefits under the Act.

The appellant, although not liable for benefits, has appealed the hearing officer's findings and conclusions that relate to the issues of compensable injury, disability, and sole cause. In brief, the points of appeal are: 1) that the testimony of (G P) was admitted in error because this witness was not timely disclosed to appellant nor was there a finding of good cause for such failure; 2) that the hearing officer erred in concluding that the respondent suffered a repetitive trauma injury in that there was no evidence, or insufficient evidence, that respondent sustained additional damage or harm to the physical structure of her body while working for the employer; 3) that the hearing officer erred in concluding that the last injurious exposure to the hazards of the disease occurred while respondent was working for the employer, because there was no evidence or insufficient evidence of any such exposure; 4) that the hearing officer erred in concluding that the respondent had disability because of her compensable injury, because there was no evidence, or insufficient evidence, of injury while working for the employer; 5) that the hearing officer erred in concluding against the overwhelming weight of the evidence that respondent's 1986 compensable back injury was not the sole cause of respondent's disability; and 6) that the hearing officer erred in repeating these findings in her decision and order.

Respondent has not filed any appeal of the hearing officer's determination that timely notice was not given and that the appellant is therefore not liable for benefits under the 1989 Act. Further, no response to the appeal has been filed.

DECISION

After reviewing the record, and finding that the appellant has been relieved of liability for benefits under the 1989 Act by the decision of the hearing officer, and further finding that this decision has not been appealed by the respondent, we determine that a review of the findings and conclusions of the hearing officer that have been appealed by appellant are

moot. We therefore affirm the decision of the hearing officer.

The Appeals Panel has previously held that points of appeal raised for the first time in a response will not be considered if that response is not filed within fifteen days after the decision of the hearing officer is received. Texas Workers' Compensation Appeal No. 92109 (Docket No. redacted) decided May 4, 1992. We acknowledge that in order to preserve its points of error on findings and conclusions not in its favor, the appellant had to file this appeal within fifteen days after receipt of the hearing officer's decision, which it has done.

Respondent, however, did not appeal the denial of benefits. Consequently, we will not review the hearing officer's determination on the independent notice issue absent a clear request to do so. Art. 8308-6.41(b). The unappealed findings, conclusions, and decision on the notice issue were material to the outcome of this case. (Any subsequent judicial appeal of the notice issue of the decision, and the resultant discharge of the appellant from liability, would appear to be foreclosed by Art. 8308-6.62(b).)

The Appeals Panel has the power to affirm a decision, or reverse a decision and remand the case or render a new decision. Art. 8308-6.42(b). In this case, a different determination on the issues raised by the appellant would not compel a reversal of the decision that it is discharged from liability for all benefits under the 1989 Act. We therefore determine that a discussion on each issue raised by appellant is moot. Pursuant to Art. 8308-6.42(c), our determination on each issue #1 through #5 raised by the appellant is that it is moot in light of the decision discharging appellant from liability. Our determination on issue #6 is that it is not error for a hearing officer to repeat in the section entitled "decision and order" a summary of the findings on the issues presented. The decision, as a whole, contains the elements required by Art. 8308-6.34(g), along with an unambiguous decision that benefits are not due.

The decision of the hearing officer is affirmed.

Susan M. Kelley
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Lynda H. Nesenholtz
Appeals Judge