

APPEAL NO. 92508

On July 8, 1992, a contested case hearing was held in (city), Texas, with (hearing officer) presiding as the hearing officer. The hearing officer determined that the claimant, (claimant), aggravated his umbilical hernia on (date of injury), that he had good cause for failing to report his injury within 30 days, and that he had disability for the period January 17, 1992 until March 28, 1992. The hearing officer further determined that the claimant was entitled to benefits under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-1.01 *et seq.* (Vernon Supp. 1992) (1989 Act), and ordered the employer's carrier, United States Fire Insurance Company, to pay temporary income benefits for the period of disability.

The employer's workers' compensation insurance carrier did not accept liability but contested compensability of the claim on the ground of lack of timely notice of injury, and the carrier and the claimant were the parties at the contested case hearing. The employer, (employer), appellant herein, had representatives at the hearing, but was not a party at the hearing. The employer has filed an appeal in this case asking that the hearing officer's decision be reviewed and reversed. Neither the carrier nor the claimant has filed an appeal or a response.

DECISION

Because no timely appeal has been filed by either party to the hearing (the claimant and the carrier), the appeals panel does not have jurisdiction to consider the appeal.

In Texas Workers' Compensation Commission Appeal No. 92110 (Docket No. redacted) decided May 11, 1992, we stated the following in regard to an employer's standing to appeal a hearing officer's decision in a contested case hearing held under the 1989 Act:

Employer lacks standing to appeal because Employer did not become a party to the benefit contested case hearing. Article 8308-6.41 (1989 Act) provides for the appeal of the hearing officer's decision by a "party." Our reading of the 1989 Act and pertinent rules promulgated by the Texas Workers' Compensation Commission (Commission) persuades us that Employer did not become a party in this matter. Articles 8308-5.10(1), (2), and (4) of the 1989 Act (Employer bill of rights) permit an employer the rights to (1) "be present at all administrative proceedings relating to an employee's claim; (2) to present relevant evidence relating to an employee claim at any proceedings; [and] (4) to contest the compensability of any injury if the insurance carrier accepts liability for the payment of benefits;" In our view, while the exercise of an employer's rights to be present and to present relevant evidence may involve such employer as a participant in a proceeding, an employer does not become a party to a proceeding unless an employer contests compensability when the insurance carrier accepts liability. Article 8308-5.10(4). We believe our view is buttressed by the observation of a number of distinctions between a

claimant, an insurance carrier, and an employer, and between a party and a participant in a proceeding, found in several provisions of the 1989 Act and the Commission's rules. (We then reviewed relevant provisions of the 1989 Act and Commission's rules and concluded that the Employer lacked standing to appeal from the hearing below in that the Employer was not a party to that hearing).

See *also* Texas Workers' Compensation Commission Appeal No. 92137 (Docket No. redacted) decided May 20, 1992, where we followed our decision in Appeal No. 92110 regarding an employer's standing to appeal in holding that the employer lacked standing to appeal because the employer did not become a party to the benefit contested case hearing.

In the present case, the carrier did not accept liability and the employer did not become a party to the contested case hearing. Consequently, in accordance with our decisions in Appeal Nos. 92110 and 92137, *supra*, we conclude that the employer, who did not become a party to the hearing but was merely a participant, lacks standing to appeal the decision of the contested case hearing officer. The employer's appeal is dismissed.

Robert W. Potts
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Susan M. Kelley
Appeals Judge