

APPEAL NO. 92530

A contested case hearing was held in (city), Texas, on September 9, 1992, (hearing officer) presiding as hearing officer. She determined that the respondent (hereinafter called claimant) sustained an injury to her back in the course and scope of her employment on (date of injury) but that she did not timely notify her employer of her injury. Accordingly, benefits were denied under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN., art. 8308-1.01 *et seq.* (Vernon Supp. 1992) (1989 Act). Appellant (hereinafter called carrier) urges error in the hearing officer's determination that the respondent was injured in the course and scope of her employment in that there is no credible lay testimony and no medical evidence to support an on-the-job injury. The claimant has not appealed the decision of the hearing officer nor has she filed a response to the carrier's appeal.

DECISION

After reviewing the record, and finding that the carrier has been relieved of liability for benefits under the 1989 Act by the decision and order of the hearing officer, and further finding that the decision and order of the hearing officer has not been appealed by the claimant, we determine that a review of the findings and conclusions of the hearing officer that have been appealed by the carrier are moot. We therefore affirm the decision and order of the hearing officer which determines that timely notice of injury was not given to the employer and denies the payment of any benefits under the 1989 Act.

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 15 days after the decision of the hearing officer is received. Texas Workers' Compensation Appeal No. 92109, decided May 4, 1992. This is in accord with Article 8308-6.41 of the 1989 Act. We acknowledge that in order to preserve its points of error on findings and conclusions not in its favor, the carrier had to file this appeal within 15 days after receipt of the hearing officer's decisions, which it has done.

Claimant, however, did not appeal the denial of benefits. Consequently, we will not review the hearing officer's determination on the untimely notice issue absent a clear request to do so. Article 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 carrier from liability, would appear to be foreclosed by Article 8308-6.62(b)).

The Appeals Panel has the authority to affirm a decision, or reverse a decision and remand the case or render a new decision. Article 8308-6.42(b). In this case, a different determination of the issue raised by the carrier would not compel a reversal of the decision that discharges the carrier from liability for any benefits under the 1989 Act. We therefore hold that a discussion of the issue raised by the carrier is moot. Pursuant to Article 8308-6.42(c), our determination on the issue raised by the carrier is that it is moot in light of the decision discharging the carrier from liability.

Accordingly, the decision of the hearing officer that the claimant failed to adequately report her injury to her employer and her order that the claimant take nothing are affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Lynda H. Nesenholtz
Appeals Judge