

APPEAL NO. 92599

This appeal arises under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-1.01 *et seq.* (Vernon Supp. 1992) (1989 Act). A contested case hearing was held in (city), Texas, on September 3 and 16, 1992, with the record being closed on October 5, 1992. (Hearing officer) presided as hearing officer. With regard to the disputed issues before her, the hearing officer held that the claimant did not sustain a repetitive trauma injury nor any other work-related injury; that the most specifically determinable date that the claimant knew or should have known of any alleged work-related injury for purposes of notice and filing a claim for workers' compensation would have been (month) of (year); that claimant did not give timely notice of an alleged injury to her employer pursuant to the 1989 Act, Article 8308-5.01; and that claimant does not have disability. The hearing officer also found that the claimant was not barred from seeking workers' compensation benefits because of an election of remedies, and that she filed her claim for compensation with the Texas Workers' Compensation Commission within one year of the date of her alleged injury. The decision and order of the hearing officer held that the employer's workers' compensation insurance carrier was not liable for medical or income benefits to the claimant as the result of this claim.

The claimant did not file a request for review of this decision, nor did she respond to the carrier's appeal. The carrier, while not objecting to those findings of fact and conclusions of law on which it prevailed, requests our review and reversal of certain other findings and conclusions. The carrier also requests reimbursement from the subsequent injury fund for all payments previously made.

DECISION

We affirm the decision and order of the hearing officer.

We have reviewed the record in this case and the hearing officer's decision and order, and we adopt the summary of the evidence as contained therein.

This panel has previously held that where an appellant carrier has been relieved of liability for benefits under the 1989 Act by a hearing officer's decision, which decision has not been appealed by the claimant, a review of the findings and conclusions of the hearing officer that have been appealed by the carrier would be moot. See Texas Workers' Compensation Commission Appeal No. 92450, decided October 9, 1992. In the instant case, as in the one cited, the unappealed findings, conclusion, and decision were material to the outcome of the case. We therefore affirm the decision and order of the hearing officer.

As noted above, the carrier seeks reimbursement from the subsequent injury fund "for all payments previously made." The record does not disclose what, if any, payments the carrier made with regard to claimant's claim. The benefit review conference report indicated that no interlocutory order for benefits was entered, and the claimant testified at

the hearing that she paid for her medical treatment herself. The appropriate Commission rule, Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 116.11 (Rule 116.11), provides that a carrier may request reimbursement from the subsequent injury fund for an overpayment of income, death, or medical benefits only in two instances: when benefits have been paid pursuant to an interlocutory order entered by a benefit review officer, and a hearing officer or arbitrator subsequently reverses the order or modifies it by reducing the amounts of benefits due, or when the carrier has paid benefits pursuant to a decision of the appeals panel, and the court of last resort reverses the decision or modifies it by reducing the amount of benefits due. Neither of these situations exists here. Even if such were not the case, Rule 116.11 states that the request for reimbursement shall be filed with the administrator of the fund. Therefore, application to this panel is not appropriate.

The decision and order of the hearing officer are affirmed.

Lynda H. Neseholtz
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Philip F. O'Neill
Appeals Judge