APPEAL NO. 92618

This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act), TEX. REV. CIV. STAT. ANN. arts. 8308-1.01 through 11.10 (Vernon Supp. 1992). On September 18, 1992, a contested case hearing was held in (city), Texas, with (hearing officer) presiding, to determine issues relating to whether the claimant, (claimant), was injured on (date of injury), while employed by (employer), whether he gave notice of such injury to his employer within 30 days, and, if not, whether there was good cause for failure to give notice. The hearing officer determined that the claimant was injured in the course and scope of his employment, but did not give notice of injury as required by the 1989 Act, Article 8308-5.01, and did not show good cause for the failure to give such notice.

The carrier has filed what it terms a conditional appeal only of the finding and conclusion that the claimant incurred a compensable injury, noting that the decision otherwise discharges it from liability for benefits. The claimant has neither filed an appeal nor a response.

DECISION

Finding that carrier was 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 claimant, we have determined that a review of the finding and conclusion of the hearing officer that an injury in the course and scope of employment was sustained is moot, and 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 15 days after the decision of the hearing officer is received.[1] Because of this holding, a carrier is required to preserve error on portions of the decision it disputes, just as the carrier in this case has done, even if the carrier was ultimately found not to be liable.

The unappealed findings on notice and good cause were in this case material to the outcome of the case, regardless of the fact that the hearing officer agreed that the claimant was injured on the job.[2] Any subsequent judicial appeal of the notice or good cause issues and the resulting discharge of the carrier from liability would appear to be ruled out by operation of the 1989 Act, Article 8308-6.62(b). Even if the Appeals Panel were to rule that the claimant were not injured within the course and scope of employment, the outcome

---

[1] Texas Workers' Compensation Commission Appeal No. 92109, decided May 4, 1992.

[2] We would note that actual knowledge of injury on the part of either the employer or insurance carrier is an exception to the 30-day notice requirement. *See* Article 8308-5.02(1). Although the record indicates that the Commission was contacted by the claimant on February 18, 1992, about filing a claim, the claimant's testimony indicated that there was initial confusion over coverage. The employer's bookkeeper also stated that he was told that the Commission did not notify the carrier or the employer about claimant's claim before April 14, 1992.

would be the same, and the decision that the carrier is discharged from liability would remain. Therefore, we determine that a discussion on the issue raised by the carrier is moot; this constitutes our determination on each issue as required by Article 8308-6.42(c).[3] We affirm the decision of the hearing officer.

The decision of the hearing officer is therefore affirmed.

Susan M. Kelley
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Lynda H. Nesenholtz
Appeals Judge

[3] Similar holdings of the Appeals Panel were made in Texas Workers' Compensation Commission Appeal No. 92450, decided October 9, 1992, and Appeal No. 92599, decided December 21, 1992.