

## APPEAL NO. 92704

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 November 30, 1992, a contested case hearing was held in (city), Texas, with (hearing officer) presiding, to determine issues relating to whether the claimant was injured on (date of injury), while employed by (employer), the employer herein, 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 not injured in the course and scope of his employment, did not give notice of injury as required by the 1989 Act, Article 8308-5.01, but did show good cause for the failure to give such notice.

The carrier has filed what it terms a conditional appeal only of the conclusion that the claimant had established good cause for failure to timely report the injury. The carrier files the request for review to preserve error, if any, regarding the hearing officer's finding of good cause. As such, the carrier states "This appeal is purely conditional in nature in that there is no need for a ruling by the Appeals Panel in the event that (claimant) does not himself perfect an appeal on the merits of the case."

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 conclusion of the hearing officer that there was good cause for failure to give timely notice of injury 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.<sup>1</sup> 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. See Texas Workers' Compensation Commission Appeal No. 92618, decided January 4, 1993.

Any subsequent judicial appeal of the injury or notice 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). 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).<sup>2</sup> We affirm the decision of the hearing officer.

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<sup>1</sup> Texas Workers' Compensation Commission Appeal No. 92109, decided May 4, 1992.

<sup>2</sup> Similar holdings of the Appeals Panel were made in Texas Workers' Compensation Commission Appeal No.

The decision of the hearing officer is therefore affirmed.

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Joe Sebesta  
Appeals Judge

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Susan M. Kelley  
Appeals Judge

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92450, decided October 9, 1992, and Appeal No. 92599, decided December 21, 1992.