APPEAL NO. 931017

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (formerly V.A.C.S., Article 8308-1.01 *et seq.*). A contested case hearing (CCH) was held on October 6, 1993, in (city), Texas, with (hearing officer) presiding as hearing officer. The issues at the CCH were whether the respondent (claimant herein) suffered an injury in the course and scope of her employment with the appellant (employer herein) on (date of injury), and whether the employer can contest the compensability of the claimant's alleged (date of injury), injury. The hearing officer ruled that the employer's contest of compensability was untimely. The employer appeals on four grounds. It contends that the hearing officer erred in refusing to enter findings on the issue of compensability, in not finding that the claimant had failed to meet her burden of showing a compensable injury, in finding that the employer was barred from contesting the claimant's injury, and in not permitting the employer to introduce testimony from the claimant. The claimant replies arguing that the findings of the hearing officer were supported by the evidence, the actions of which the employer complained were not erroneous but within the hearing officer's discretion, and that the decision of the hearing officer should be affirmed.

DECISION

Finding no reversible error in the record and sufficient evidence to support the decision of the hearing officer, we affirm.

The hearing officer set out a detailed description of the facts of the case in the section of his decision entitled "Statement of the Evidence" and we adopt this rendition of the evidence for purposes of our decision. We briefly review the major points. According to the testimony of the head of the employer's accounting department, (Ms. Z), she was the claimant's supervisor in March 1991. Ms. Z testified that the company was planning to relocate at the time and that the claimant would not move with the company. Ms. Z stated that on (date of injury), the claimant reported slipping on a cord returning from the warehouse and told Ms. Z that she planned to see a doctor. Ms. Z further testified that on April 17, 1991, the claimant's doctor called her and told her that they were filing workers' compensation. Ms. Z said that she had seen the claimant at work from (date of injury), to April 17, 1991, and that the claimant wore high heels, walked normally and did not appear to her to be injured.

Ms. Z testified that in (month year) she had the claimant fill out an accident report. In the accident report the claimant listed (JB) as a witness to her accident. Ms. Z also testified that in (month year) the employer laid off the claimant because business in her area had declined. Ms. Z stated she forwarded all the information she had to the employer's workers' compensation insurance carrier, and it was her understanding that it had denied the claim. Ms. Z attended a benefit review conference concerning the claim in September 1991 as the employer representative. She testified she was prepared to attend a scheduled November 20, 1991, CCH, but that the carrier called her before the CCH and told

her not to attend because the carrier was going to "capitulate". Ms. Z also testified that the carrier had advised her not to discuss the claim with JB who worked for the employer. In August 1991, JB was laid off by the employer.

JB testified that he had worked for the employer as a maintenance technician in 1991. He testified that he was very difficult to reach. He denied seeing the claimant's alleged March 1991 fall. He recalled that the claimant told him about the accident and that he was a witness. JB testified that he did not know what the claimant meant. JB testified that it was virtually impossible for there to be a cord where the claimant said she tripped over one.

The employer's first point of error was that the hearing officer erred in refusing to enter findings on the issue of a compensable injury. The hearing officer in this case decided to bifurcate the process--he stated that first he would decide the issue of whether the employer's contest of compensability was timely and then would, after deciding this matter, take up at a later time the issue of whether there was a compensable injury. The employer objects to this as constituting a violation of the hearing officer's duty to develop the record and to decide all the issues before him citing Tex. W. C. Comm'n, 28 TEX. ADMIN. CODE § 142.2 (Rule 142.2) and Rule 142.16. *See* Section 410.163 (1989 Act).

We agree that the better process is for a hearing officer to determine all issues before him. For one thing, it fosters efficiency in the benefits resolution process in the long run. While the hearing officer may save some time initially by determining only one issue, for instance compensability, while refusing to take evidence on another issue, for instance timely notice, if we reverse the ruling of the hearing officer on compensability then we would have to remand on notice for development of the evidence and factual determinations. We would in effect be unable to render the case. This can lead to delay and a waste of dispute resolution resources. It is further complicated by the fact that under the statute the Appeals Panel may only remand once. Section 410.203(c). This means that if the hearing officer errs on remand, we may be unable to use remand to rectify an error, and if in the particular case rendering cannot remedy the error, the matter may be unnecessarily forced into judicial review. This is the reason that the refusal of a hearing officer to determine all the issues before her or him is not a prescription for judicial efficiency, but in fact just the opposite.

However, we have previously held that where a dispute of compensability is untimely, and it is found by a hearing officer that there was no compensable injury, the claimant is entitled to benefits. *See* Texas Workers' Compensation Commission Appeal No. 92278, decided August 10, 1992; Texas Workers' Compensation Commission Appeal No. 93967, decided December 9, 1993. In the present case, where the evidence that the employer's contest of compensability was untimely is overwhelming (which we will shortly discuss below), we feel that to remand this case to have the hearing officer determine the issue of compensability when such a determination would not effect the result would be an exercise in futility and a true waste of the resources of the dispute resolution process. Expressed another way, even if the determination of the hearing officer not to decide the issue of compensability was error, under the circumstances of this case such error is harmless.

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Nor will we render a decision that the claimant did not suffer a compensable injury. Even if we were to render such a decision, it would not effect the result in this case. *See* Appeal No. 92278, *supra*; Appeal No. 93967, *supra.* Therefore, we find no reason to do so.

The employer argues that we should reverse the hearing officer's decision that the employer's contest of compensability was untimely. To do so would require a reversal of our decision in Texas Workers' Compensation Commission Appeal No. 92280, decided August 13, 1992. In that case we held when the carrier accepts liability, the employer must contest compensability in a reasonable amount of time under then Article 8308-5.10 (now Section 409.011). Clearly, in the present case, where the employer waits two years post injury to file a contest, when the "newly discovered evidence" it claims is the testimony of a co-worker (another employee of the employer) who the employer neglected to interview concerning the accident until March 1993 when it was aware that the claimant had been claiming he was a material witness since (month year), and where once the employer knew that the carrier had decided to drop its dispute of compensability the employer failed for a year and half to dispute compensability itself, the employer simply did not exercise due diligence. Further, we cannot find due diligence based upon the employer's contention that it was not aware until the Fall of 1992 that it had an independent (of the carrier) right to contest compensability. Ignorance of the law is not an excuse. Texas Workers' Compensation Commission Appeal No. 93446, decided July 19, 1993; Texas Workers' Compensation Commission Appeal No. 93551, decided August 19, 1993. Thus, in Applegate v. Home Indemnity Company, 705, S.W.2d 157 (Tex. App. -Texarkana 1985, writ dism'd), it was held that ignorance of the notice and filing provisions of the workers' compensation law was not good cause for failing to comply with those provisions.

Finally the carrier raises the point that the refusal of the hearing officer to allow the employer to call the claimant to the stand was error. For any evidentiary ruling to constitute reversible error harm must be shown. *See* Gee v. Liberty Mutual Fire Insurance Company, 765 S.W.2d 394, 396 (Tex. 1989). Reversible error is not ordinarily shown in connection with rulings on questions of evidence unless the whole case turns on the particular evidence admitted or excluded. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App. -San Antonio 1983, writ ref'd n.r.e). In the present case we fail to see what light the claimant's testimony could have shed upon the employer's failure to timely contest compensability. Even had the carrier been able to establish through the testimony of the claimant that she did not suffer a compensable injury, the result would have not been affected. *See* Appeal No. 92278, *supra*; Appeal No. 93967, *supra*. Again any error on the part of the hearing officer is harmless under the circumstances of this case.

The decision of the hearing officer is affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Joe Sebesta
Appeals Judge

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