

## APPEAL NO. 960997

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On April 24, 1996, a contested case hearing (CCH) was held. In response to the litigated issues before him, the hearing officer determined that claimant injured his back "during the first week of \_\_\_\_\_," that claimant did not timely report the injury to his employer and had no good cause for failing to do so and that because claimant had not timely reported his injury, he did not have a "compensable" injury and consequently did not by definition have disability.

Although the hearing officer found that the carrier was not liable for benefits and claimant has not appealed that decision, carrier, nonetheless, appeals the hearing officer's determinations that claimant sustained an injury and alleges that it is not possible for claimant to have sustained an injury on \_\_\_\_\_ (all dates are 1995, unless otherwise noted). Carrier requests that we reverse the hearing officer's decision that claimant sustained a "compensable injury" (which is not what the hearing officer found) and render a decision in its favor. Claimant did not file a response.

### DECISION

Affirmed.

Initially, we must comment on the curiosity of carrier's appeal, which requested reversal of two factual determinations (Finding of Fact No. 6 and Finding of Fact No. 10) that claimant had sustained an injury and was unable to obtain and retain employment for a certain period, and which completely, apparently, disregarded the Conclusions of Law that claimant had not timely reported his injury, thus, had not sustained a compensable injury and thereby did not have disability, resulting in an order that carrier was not liable for benefits. However, having carrier's timely filed, unconditional appeal, we will comment on carrier's principal point that claimant could not have sustained an injury on \_\_\_\_\_ and the hearing officer's determination that claimant sustained an injury "during the first week of \_\_\_\_\_."

Claimant alleged that he injured his back while lifting during "the first week of (month of injury) of '95." The benefit review conference (BRC) report listed a date of injury as \_\_\_\_\_ and claimant made no attempt to dispute or clarify that specific date. Carrier's interrogatories also referred to an alleged date of injury of \_\_\_\_\_ and in the interrogatories, claimant alleges that he reported the injury to a certain supervisor on \_\_\_\_\_. The record of the CCH is that the claimant is vague as to the exact date of injury, although he is specific that he saw a doctor the following day, (day after date of injury). Medical records which might have supported or contradicted claimant's testimony were not admitted into evidence. Carrier succeeded in offering testimony and evidence that the employer's master time sheet showed claimant was not working on either \_\_\_\_\_ or (day after date of injury). Carrier alleges that it was not until after claimant was faced with the master time sheet that claimant became vague and stated that he was

injured the first week in (month of injury). The hearing officer commented, in his statement of evidence, that the "hallmark of this hearing was the substantial inconsistencies in the evidence" and made a factual determination that claimant sustained an injury "during the first week of \_\_\_\_\_."

Appeals Panel decisions have not required a claimant to pinpoint a specific date of injury, but where such testimony and evidence is vague, inconsistent or contradictory, the hearing officer has the responsibility to resolve conflicting dates of injury as reported by a claimant. Texas Workers' Compensation Commission Appeal No. 92358, decided September 9, 1992; Texas Workers' Compensation Commission Appeal No. 941029, decided September 16, 1994. In this case, the hearing officer found a date of injury to be "during the first week of \_\_\_\_\_." In Texas Workers' Compensation Commission Appeal No. 941374, decided November 23, 1994, the Appeals Panel held that a date of injury of "August of 1993" was insufficient and noted that under the 1989 Act, a date certain is the triggering point for the running of several time periods such as notice of injury, statutory maximum medical improvement (MMI), calculation of the average weekly wage (AWW), etc. Similarly, in Texas Workers' Compensation Commission Appeal No. 941656, decided January 26, 1995, a case was remanded for a determination of a specific date of injury.

In the instant case, the hearing officer should have specified a date that the injury occurred and we would have reviewed that determination regarding whether the evidence supports that date of injury. Under other circumstances, we might have remanded for a determination of a specific date of injury. However, under the circumstances of this case, where the hearing officer found that the injury was not compensable as not having been timely reported and that determination not having been appealed and hence having become final, we find that a remand for a specific date of injury to be unwarranted and to serve no useful purpose.

Accordingly, the hearing officer's decision and order are affirmed.

Thomas A. Knapp  
Appeals Judge

CONCUR:

Elaine M. Chaney  
Appeals Judge

Judy L. Stephens  
Appeals Judge