

APPEAL NO. 990212

This appeal is considered in accordance with the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On December 28, 1998, a contested case hearing (CCH) was held. The issues concerned whether the respondent (claimant) sustained a compensable injury on _____, and whether claimant timely reported his alleged injury to his employer. The hearing officer determined that claimant did not sustain a new compensable hernia injury but that he did timely report his alleged injury. Appellant (carrier) appealed the timely notice determination despite the fact that it prevailed at the CCH. Claimant did not respond on appeal.

DECISION

Finding that the carrier's appeal was conditioned upon the filing of an appeal by the claimant and that the claimant has not filed an appeal, we dismiss the carrier's appeal and determine that the decision and order of the hearing officer have become final pursuant to Section 410.169.

Although the carrier's appeal of the notice determination was not conditional, we will not reach that issue on appeal. The carrier prevailed at the hearing and is not aggrieved by the hearing officer's decision and order. Even if we were to find that the hearing officer erred in making this determination regarding timely notice, that determination would not effect the decision and order. Thus, if we were to issue an opinion on this issue, it would be in the nature of an advisory opinion. We have previously stated that the issuance of advisory opinions is not included within the powers and duties of the Appeals Panel established in the 1989 Act. Texas Workers' Compensation Commission Appeal No. 950182, decided March 22, 1995. Accordingly, we will not consider the carrier's challenge to the hearing officer's timely notice determination.

Even if we were to consider carrier's appeal, we note that there was evidence that claimant's injury actually took place on April 3, 1998, and that claimant spoke to Mr. D, a supervisor, about the claimed injury within 30 days. There was evidence that claimant reported an incident at work that caused pain and that he was sent to obtain medical attention. The hearing officer could find from the evidence that claimant reported an incident that may be work related. If we had considered claimant's appeal on the merits, we would conclude that the hearing officer's determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust.

We dismiss carrier's appeal. The hearing officer's decision and order have become final.
Section 410.169.

Judy Stephens
Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Elaine M. Chaney
Appeals Judge