

APPEAL NO. 991106

This appeal is considered in accordance with the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On April 29, 1999, a contested case hearing was held. At issue was whether the respondent (claimant), sustained an injury in the course and scope of employment in the form of an occupational disease; the date of the injury; whether the claimant reported the injury to his employer within 30 days after the date of injury, or whether he had good cause for any failure to report; and whether the claimant had inability to obtain and retain employment equivalent to his preinjury average weekly wage due to a compensable injury.

The hearing officer held that the claimant sustained injury to his hands, and the date he knew or should have known that this injury may be related to his employment was _____. The hearing officer found that the claimant could not work due to this injury beginning December 14, 1998. However, the hearing officer discharged the appellant (carrier) from liability for any benefits because he found that the claimant did not notify his employer of his injury until January 11, 1999, and that he did not have good cause for the delay. Because he held that the injury was not compensable, he found that there was no "disability," as that term is defined in the 1989 Act.

The claimant has not appealed or responded to the carrier's appeal. The carrier, although ordered not to pay benefits, appeals the hearing officer's determinations on the occurrence of an injury and the date of injury. The carrier also disagrees with the fact findings that the claimant was unable to obtain and retain employment due to this injury beginning on December 14, 1998.

DECISION

Determining that the carrier intended to file a conditional appeal and is not otherwise "aggrieved" by the decision of the hearing officer, we summarily affirm.

The carrier in this case has invited review on the hearing officer's determination of the date of injury and of the fact of an injury. Although it argues that the claimant knew, or should have known, much earlier than _____, that he had an injury that may be related to his employment, our review of this matter would not preclude the Appeals Panel from determining that the evidence did not support that date found by the hearing officer (in fact, a later date was supported) which might change the result in this case that was favorable to the carrier. The matters appealed by the carrier are ancillary to the outcome of the case, which was favorable to the carrier. We point out that judicial review can only be sought by a party that is "aggrieved" by a final decision of the Appeals Panel. Section 410.251. Although the word "aggrieved" is not specifically used in the statutes concerning request for review to the Appeals Panel, we find nothing in the 1989 Act requiring this body to review a decision which results in a finding of no liability on the part of the carrier but is nevertheless appealed by the carrier.

We conclude that the carrier has filed this appeal to preserve its rights in anticipation that the claimant would appeal the finding on untimely notice to the employer. This did not occur.

We accordingly treat the request for appeal as a conditional appeal, noting briefly that the matters appealed amount to fact findings that we have generally stated are within the responsibility of the hearing officer as the sole judge of the weight and credibility of the evidence, and are not reversible by this Appeals Panel in the absence of a great weight and preponderance of evidence to the contrary.

Susan M. Kelley
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Dorian E. Ramirez
Appeals Judge