APPEAL NO. 992024

This appeal arises pursuant to the Texas Workers' Compensation Act of 1989, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On August 17, 1999, a decision on remand was signed. Texas Workers' Compensation Commission Appeal No. 983042, decided February 3, 1999, had remanded the case because the audio recording did not convey some questions propounded by respondent's (claimant) counsel to claimant during his testimony. The hearing officer states in her decision on remand that a Statement of Evidence agreed to by the parties sufficed in lieu of testimony. (Appeal No. 983042 had pointed out that there were said to be no disputed facts in the original hearing officer's decision but cited the requirement that the Appeals Panel consider the record of hearing in making its decision.) The documentary evidence admitted at the original hearing was again considered as part of the evidence. Appellant (carrier) asserts that the hearing officer erred in finding that the claimant timely filed a claim under the 1989 Act, that it was error to determine that "claimant did not knowingly elect to pursue the remedy of benefits under the (State 1) workers' compensation system," that it was error to determine that claimant was entitled to benefits under the 1989 Act "in addition to the benefits already received," and that determinations as to issues of timely filing of a claim and election to recover in another jurisdiction were not supported by sufficient evidence on remand. Claimant replied that the decision should be affirmed and attached various documents having to do with a denial of summary judgment in a similar case.

DECISION

We affirm, as modified.

The issues before the hearing officer were whether claimant timely filed a claim under the 1989 Act and, if not, whether there was good cause or whether the employer or carrier did not contest the claim and whether claimant elected to "pursue a remedy and recover compensation under the workers' compensation law of another jurisdiction, thereby barring recovery" under the 1989 Act. The hearing officer found on remand that claimant filed a claim "within one year of the injury as required by the Texas Labor Code" and that claimant did not elect to pursue a remedy and recover compensation under the laws of another jurisdiction.

Carrier states on appeal, "in an attempt to follow the appeals panel direction, the parties stipulated to a portion of hearing officer _____ finding of fact" and "the file of the (State 1) workers' compensation court does not contain any documents which were filed by claimant." Carrier then pointed out that no stipulations were made in regard to the tolling of the one-year period to file a claim, in regard to whether claimant had significant contacts in Texas and what claimant "knowingly elected" to do in regard to workers' compensation. We restate that the original record was returned for assuring that a complete record be provided since part of the testimony at the original hearing was not audible; in returning the case, the author judge said that the record could be constructed in a manner suitable to the parties and hearing officer, specifically mentioning that an agreed

Statement of Evidence would be acceptable. The hearing officer chose to address the problem with "stipulated facts" which was permissible. There was never any request or implication that the parties should stipulate to ultimate findings of fact or legal conclusions to be drawn from the facts. The stipulations not made, which carrier alludes to, appear to fall into the latter category and if the hearing officer sought stipulations as to tolling in regard to the one-year time for filing a claim, in regard to significant contacts in Texas, and in regard to what claimant "knowingly elected" to do, such stipulations were not required in addressing the Appeals Panel order for remand to provide a complete record.

The hearing officer in her decision on remand listed 14 stipulated facts with the last being "the file of the (State 1) workers' compensation court does not contain any documents which were filed by claimant," just as is cited by carrier in its appeal. After considering carrier's appeal, including the quoted language from it set forth in the prior paragraph, we conclude that carrier is not asserting that it did not stipulate to the 14 points set forth in the hearing officer's "stipulated facts" contained within her Statement of Evidence.

Among the stipulated facts, claimant sustained an injury on _____, in (State 2), while working for (employer) as a driver. Another stipulated fact said that claimant resided within 75 miles of the (City 2) field office of the Texas Workers' Compensation Commission (Commission) on _____. Claimant did not file a claim under the 1989 Act until January 17, 1998, but another stipulation said, "no TWCC-1 had been filed with the Commission as of December 2, 1998," even though employer and carrier "had notice" of the _____, injury. From these stipulated facts the hearing officer then made a "finding of fact" that the one-year filing period had been tolled because of the employer's failure to file a TWCC-1. (Section 409.003 requires that a claim be filed under the 1989 Act not later than one year after the date injury occurred, but Section 409.008 then provides for tolling of the running of the one-year time period for making a claim if the employer or carrier had notice of the injury and failed to file a report under Section 409.005 with the Commission; the one-year period then begins to run when the required report by the employer is filed with the Commission. Section 409.005 requires a report to the Commission when an employee has been off work for one day. Documents submitted by carrier and admitted by the hearing officer indicate that claimant had "TTD" from August 18, 1995, through November 3, 1995, and was paid a certain amount by (State 1). (Various conditions are listed on the form including "disability type" with "temporary total," temporary partial," etc. listed thereunder.) The hearing officer could infer from these documents that claimant, as "temporarily totally disabled" was off work for at least one day, necessitating a report to the Commission under the 1989 Act and, according to the stipulation, that no report was filed with the Commission by employer or carrier by December 1998. Therefore, the determination that claimant's requirement to file a claim under the 1989 Act within one year was tolled is sufficiently supported by the evidence. While it may appear incorrect to have concluded that claimant filed a claim under the 1989 Act within one year "of the injury," evidence and the findings of fact support a determination that claimant filed a claim within one year of the running of the period as required by the 1989 Act.

In regard to the issue of whether claimant elected to pursue a remedy under the workers' compensation law of another jurisdiction, "barring recovery" under the 1989 Act, carrier provided a copy of an "agreement" entered into by claimant in 1989. That statement said that claimant understood that his employment "will not be determined" until he completed "selection and indoctrination procedures at (City 1), (State 1)." It did not say what those procedures were, but it also said that claimant was attempting to qualify as a driver for "Pride of (City 2)." The final sentence then stated:

I agree my place of hire and work place shall be (address), (City 1), (State 1).

Claimant signed this statement on July 5, 1989. There was a witness to his signature but no other party signed the "agreement." The statement contained no reference to claims, injury, workers' compensation, medical care, state income tax, or any other acknowledgement of effect which the identification of a "place of hire" and "work place" could have.

The 1989 Act addresses coverage at Section 406.071. It says that an employee injured in another jurisdiction is entitled to "all rights" if the injury would be compensable if occurring in Texas "and" the employee has significant contacts with Texas "or" the employment is principally located in Texas. (The hearing officer found "significant contacts" and did not address principal location.) The section then goes on to say that significant contacts exist if the employee "was hired or recruited" in Texas "and" injury occurred not later than one year after the hiring "or has worked in the state for at least 10 days during the 12 months preceding the date of injury."

The "agreement" cited by carrier actually indicates that claimant would be working for "Pride of (City 2)" but indicated that he would have to complete procedures after signing this document "at (City 1), (State 1)." While the statement did not acknowledge any election to choose (State 1) procedures in regard to workers' compensation, it did say that the "place of hire" was (City 1), (State 1). It did not say that claimant had not been "recruited" in Texas and the statement, taken as a whole and together with other evidence of record, including other stipulations, could be reasonably inferred to indicate that claimant was recruited in (City 2) to work out of (City 2), and (City 2) could be reasonably inferred to be (City 2), Texas. In regard to the question of working in Texas for 10 days during the year preceding the injury, the parties stipulated that claimant was hired in Texas and that claimant "has worked out of employer's terminal in (City 2), Texas at all times pertinent to this claim." In addition, while claimant received benefits through (State 1) workers' compensation, the parties stipulated that "the file of the (State 1) workers' compensation court does not contain any documents which were filed by claimant."

Section 406.075 states, in part, that a claimant who "elects to pursue" workers' compensation benefits in another state "and" who recovers therefrom "may not recover" under the 1989 Act; it also says that the "amount of benefits accepted" under another state's workers' compensation system, "without an election . . . shall be credited against the benefits that the employee would have received had the claim been made under this subtitle."

The evidence, together with reasonable inferences that the hearing officer could draw from it, sufficiently supports the finding of fact that claimant had significant contacts with Texas. The absence of any indication that claimant sought workers' compensation benefits through (State 1) and the stipulation that claimant's employer filed a claim for benefits in (State 1) for him sufficiently support the finding of fact that claimant took no action to obtain workers' compensation benefits from (State 1).

As to carrier's assertions regarding matters of defending cases in various states, *see* Texas Workers' Compensation Commission Appeal No. 951221, decided September 8, 1995, which pointed out the statutory requirements of the 1989 Act and the limited ability of a claimant to bring actions in other states.

The evidence, including the stipulated facts, sufficiently support the determinations that claimant timely filed his claim in Texas and that claimant did not elect to pursue workers' compensation in another state, so recovery in Texas is not barred. In so upholding the decision of the hearing officer, we point out that any amount that may be due to claimant under the 1989 Act will be subject to the second provision of Section 406.075, which calls for a credit based on benefits accepted from another state. As modified, the decision and order are sufficiently supported by the evidence and are affirmed. *See* In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

_____
Joe Sebesta
Appeals Judge

CONCUR:

_____
Susan M. Kelley
Appeals Judge

CONCUR IN RESULT:

_____
Alan C. Ernst
Appeals Judge