

APPEAL NO. 992072

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On August 27, 1999, a hearing was held. She (the hearing officer) determined that the _____, injury of the appellant (claimant) occurred under the jurisdiction of the Longshore and Harbor Workers' Compensation Act (LHWCA) and that the untimely controversion of compensability by respondent (carrier) does not waive jurisdiction. Claimant asserts that the carrier "had notice of the jurisdiction of this case" no later than in 1996, but paid Texas workers' compensation benefits to claimant. Claimant also appears to contend that a finding of fact concerning written notice to the carrier is incorrect because there was earlier verbal notice to carrier. Claimant asserts that carrier "waived its right to dispute the claimant's alleged right to receive Texas Workers' Compensation benefits on account of violation of [Section] 406.091 . . ." Carrier replied that the Appeals Panel should affirm the decision and order.

DECISION

We reverse and remand.

Claimant contends that the hearing officer erred in determining that carrier had notice of the claim on July 10, 1996. Claimant asserts that there was earlier verbal notice to carrier. Section 409.021(a) provides for written notice to the carrier and Section 409.021(c) provides for 60 days in which to "contest the compensability of an injury." The hearing officer determined that the first written notice of injury to carrier was provided on July 10, 1996. There is no evidence in the record of an earlier written notice. The July 10, 1996, date is set forth on the carrier's Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) which also shows the date of that form as being September 17, 1996, over 60 days after the written notice was received. We conclude that the determination regarding notice is sufficiently supported by the evidence of record.

Claimant asserts that the carrier "had notice of the jurisdiction of this case" no later than in 1996, but still paid Texas workers' compensation benefits to claimant. Claimant contends that jurisdiction regarding benefits to be paid was "questionable." Claimant cited Section 406.091 and contends that carrier "waived its right to dispute the claimant's alleged right to receive Texas Workers' Compensation benefits on account of violation of [Section] 406.091"

Section 406.091 states, in pertinent part:

EXEMPT EMPLOYEES; VOLUNTARY COVERAGE.

(A) The following employees are not subject to this subtitle:

(2) a person covered by a method of compensation established under federal law;

A claimant may not recover both Texas Workers' Compensation benefits and also benefits under the LHWCA. Texas Workers' Compensation Commission Appeal No. 93504, decided August 4, 1993.

Claimant worked for (employer) on _____. On that day he was doing maintenance work on structural steel above a dock. He sustained a crush injury to part of his right hand. On July 11, 1996, claimant made a claim on a U.S. Department of Labor form for the _____, hand injury. Employer responded that it did not have LHWCA compensation insurance coverage. There is a letter in evidence indicating that on June 25, 1999, claimant's attorney wrote to a Labor Department judge saying that "the parties in this case have resolved their issues. The defendant will agree that this accident happened in [LHWCA] jurisdiction." Another letter dated June 28, 1999, says the employer "will agree" that the _____, incident occurred "within Longshore and Harbor Workers' Act jurisdiction."

Claimant's counsel stated at the hearing:

We feel it is a dual jurisdiction. But we feel that since they did not timely object as the statute provides, then we have the right to elect which avenue we wish to pursue.

The hearing officer found that the LHWCA is a "method of compensation established under federal law" and that claimant's injury under "the exclusive jurisdiction of the [LHWCA]." Claimant contends that he is still entitled to the rights and remedies as set for in the Texas Workers' Compensation Act (the 1989 Act). The hearing officer found the injury did not fall within the jurisdiction of the 1989 Act, so an untimely controversion as to compensability of the injury does not result in a waiver of jurisdiction.

We reverse the hearing officer's determinations regarding carrier waiver and claimant's entitlement to benefits. Despite the June 25, 1999, letter regarding "resolution" of the LHWCA issues, we remand this case for another hearing regarding what determination was made by Federal officials with regard to claimant's LHWCA claim and employer's August 14, 1996, controversion of the claim. The hearing officer should determine what "order" was entered after the United States department of Labor's remand to the "[city] district office," as referred to in the June 28, 1999, letter of employer's counsel. Such order should be made a part of the record in this case. We do not reach the remaining issues in this case and defer their consideration until after the hearing officer's decision on remand.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's Division of Hearings, pursuant to Section 410.202. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

Judy L. Stephens
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Gary L. Kilgore
Appeals Judge