

APPEAL NO. 000036

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on November 8, 1999. The hearing officer determined that the Texas Workers' Compensation Commission (Commission) does not have jurisdiction to determine whether the death of the deceased, who was the wife of the appellant (claimant), was the result of the compensable injury she sustained on \_\_\_\_\_, because that matter has been finally decided by the Commission and is pending judicial review, and that, in any case, the death of the deceased was not a result of the compensable injury. The claimant appeals these determinations, contending that the Commission does have jurisdiction in this matter because it is a "separate claim" and that the decision on causation is against the great weight and preponderance of the evidence. The respondent (carrier) replies that the decision is correct, supported by sufficient evidence, and should be affirmed.

DECISION

Affirmed.

The deceased contracted hepatitis C as a result of a blood transfusion during a gall bladder operation in 1982. On \_\_\_\_\_, she sustained a compensable low back injury in a fall at work. In September 1993, the treatment for her back injury included steroid injections. Until then the hepatitis C condition had been dormant. It resurfaced after the injections. On May 16, 1995, a CCH was held to address, among other issues, whether the compensable injury was a producing cause of the hepatitis C. The hearing officer found that it was not. This determination was appealed to the Appeals Panel and the case remanded for completion of the record. See Texas Workers' Compensation Commission Appeal No. 951471, decided October 11, 1995. On remand, the hearing officer again found that the deceased did not establish that the compensable injury was a cause of the hepatitis C. The deceased unsuccessfully appealed, Texas Workers' Compensation Commission Appeal No. 960468, decided April 22, 1996, and then sued in state district court to have this decision of the Appeals Panel reversed. That suit is still pending. The deceased died on June 3, 1996. The causes of death listed on the death certificate were end stage liver failure and chronic hepatitis C.

The issues at the CCH which are the subject of this appeal were:

1. As a result of the Decision and Order of the [CCH] (and affirmation by the Appeals Panel in Appeal No. 960468), does the [Commission] have jurisdiction to determine whether the death of the deceased was a result of the compensable injury sustained on \_\_\_\_\_?
2. Was the death of the deceased a result of the compensable injury sustained on \_\_\_\_\_.

The hearing officer concluded that the Commission did not have jurisdiction to determine whether the death of the deceased was a result of the compensable low back injury of \_\_\_\_\_. We agree. The issue in the first CCH was framed in terms of whether the compensable injury was a producing cause of the hepatitis C. The issue in the current CCH was in terms of whether the deceased's death was the result of the compensable injury. We believe this to be a distinction without legal effect because the claimant's position has always been that the cause of death was the hepatitis C and the hepatitis C was part of the compensable injury. Thus, the questions of whether the hepatitis C was part of the compensable injury and whether death caused by the hepatitis C was a compensable injury essentially merged into the same issue even though one is denominated by the claimant as a "separate claim." This issue of the compensability of the hepatitis C, without regard to whether the hepatitis C caused the deceased's death, has already been addressed by the Commission and is now pending judicial review. Pursuant to Section 410.207, the Commission no longer has jurisdiction of this issue. For these reasons, we affirm the jurisdictional determination of the hearing officer.

Although the hearing officer determined he had no jurisdiction, he nonetheless addressed the second listed issue of causation on the merits as if he had jurisdiction in order to avoid a remand if the jurisdictional part of his decision was reversed. Assuming jurisdiction, we believe that this second issue of whether the compensable injury caused the deceased's death is *res judicata*. The doctrine of *res judicata*, generally speaking, "prevents the relitigation of a claim or cause of action that has been finally adjudicated as well as related matters that, with the use of due diligence, should have been litigated in the prior suit. Barr v. Resolution Trust Corporation, ex rel. Sunbelt Federal Savings, 837 S.W.2d 627, 628 (Tex. 1992). It has been found applicable to administrative proceedings generally, see Bryant v. L.H. Moore Canning Company, 509 S.W.2d 432 (Tex. Civ. App.-Corpus Christi, 1974), cert. denied 419 U.S. 845, and by the Appeals Panel to the dispute resolution process. See, e.g., Texas Workers' Compensation Commission Appeal No. 960022, decided February 15, 1996. As discussed above, we believe that the issues of the compensability of the hepatitis C and the compensability of a death caused by the hepatitis C are essentially the same issue. The claimant argues that *res judicata* does not apply in this case because the parties are different; that in the first case, his wife was the claimant, while in this case he is the claimant. Clearly, the parties are distinct. However, the rights of the claimant to death benefits are solely derivative from the rights of the deceased. Insofar as claimant has a claim to benefits, he stands in the position of the deceased. Thus, we conclude that the doctrine of *res judicata* would apply to the compensability issue before the hearing officer if he had jurisdiction.

For the foregoing reasons, we affirm the decision and order of the hearing officer.

Alan C. Ernst  
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.  
Chief Appeals Judge

DISSENT IN PART AND CONCUR IN PART:

As I understand the sequence of events, the May 1995 contested case hearing (CCH) concerned the extent of the deceased's injury, that is, whether the compensable back injury was a producing cause of her hepatitis C, and the Appeals Panel decision affirming the hearing officer's decision against deceased is on appeal to district court. Since deceased did not die until June 1996, there could not have been any issue at the May 1995 CCH regarding whether her death was a result of her compensable injury. That issue was before the hearing officer at the November 1999 CCH. The Appeals Panel decision that has been appealed to district court makes no decision on whether deceased's death was a result of her compensable injury because that issue was not before the Appeals Panel. I would reverse the hearing officer's decision that the Texas Workers' Compensation Commission does not have jurisdiction to determine the death issue. However, I would affirm the hearing officer's decision that deceased's death was not the result of her compensable injury for the reason that the cause of death was hepatitis C which has been determined not to be part of the compensable injury and that determination is binding during the pendency of the judicial appeal on the extent-of-injury issue.

Robert W. Potts  
Appeals Judge