

APPEAL NO. 011796
FILED SEPTEMBER 24, 2001

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 July 5, 2001. By consent of the appellant (carrier) and respondent (claimant), and due to the fact that another carrier was required to be added as a party, the disputed issues were returned to the benefit review officer for further mediation and administration. The carrier appealed an evidentiary observation made by the hearing officer in her decision and order. There is no response from the claimant.

DECISION

Affirmed.

There is no appealable error in the hearing officer's decision. No evidence was taken at the CCH because prior to the commencement of the evidentiary portion of the hearing, it became obvious to all present that the parties were not prepared to go forward because a second carrier needed to be joined in order to fully adjudicate the disputed issues.

The claimant was being represented by Mr. G, personal representative. During the preliminary matters, the carrier made it clear that it intended to call Mr. G as a witness at the CCH, ostensibly to support a defense that the claimant had filed a spite claim. There was no showing that such information could not be otherwise developed or was uniquely that of the representative. In her Decision and Order, the hearing officer recites that the carrier has sought a subpoena for the records of the representative, that she would grant after *in camera* inspection of the representatives records, and then states, "[f]inally, I explained that I would not permit Mr. G to testify in the proceedings." It is this statement by the hearing officer that the carrier has now appealed.

We find that this is not an appealable ruling at this time and we decline to issue an interlocutory ruling on what evidence any future hearing officer should make on proceedings which have yet to occur. The hearing officer's observation does not equate to either a ruling or a determination at this point in the proceedings. Whether the controversy will be adjudicated in another CCH is as yet unknown.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **LIBERTY MUTUAL FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEMS
350 N. ST. PAUL STREET, SUITE 2900
DALLAS, TEXAS 75201.**

Susan M. Kelley
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Philip F. O'Neill
Appeals Judge