

APPEAL NO. 012017  
FILED OCTOBER 16, 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 August 1, 2001. The hearing officer determined that the appellant's (claimant) average weekly wage (AWW) is \$226.43, using a fair, just, and reasonable method of calculation. The claimant appealed the hearing officer's determination, asserting that the hearing officer should have used a different figure when calculating the claimant's AWW. The respondent (carrier) has not filed a response to the appeal. Employer filed an appeal of the hearing officer's "decision to increase [claimant's] wages and this whole claim," essentially contending that the claimant was not its employee.

DECISION

Affirmed.

First, with regard to the employer's appeal, we have previously held in a number of cases that an employer who is not a party at a CCH has no standing to appeal the decision of a hearing officer. See Texas Workers' Compensation Commission Appeal No. 92110, decided May 11, 1992; Texas Workers' Compensation Commission Appeal No. 94069, decided March 1, 1994; Texas Workers' Compensation Commission Appeal No. 001946, decided September 29, 2000. The employer's appeal is dismissed for lack of standing.

The hearing officer did not err in determining that the claimant's AWW is \$226.43. The hearing officer used the fair, just, and reasonable method provided for in Section 408.041(c) and in Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 128.3(g) (Rule 128.3(g)) to calculate the claimant's AWW. The hearing officer divided \$744.00 (the claimant's gross earnings) by three and two-sevenths weeks<sup>1</sup> (the number of weeks the claimant worked for the employer prior to the injury) to arrive at the AWW. The hearing officer determined that the method adopted was fair, just, and reasonable. Upon review of the record, we cannot conclude that the hearing officer's AWW determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Nor do we conclude that the hearing officer abused his discretion in adopting the above-referenced methodology for calculating the claimant's AWW.

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<sup>1</sup>The hearing officer calculated the number of days between the day when the claimant was hired, on February 12, 1999, until the day he was injured, \_\_\_\_\_ (\_\_\_ days), and divided by the number of days in a week (7) to arrive at \_\_\_\_\_ weeks worked by the claimant.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **TEXAS WORKERS' COMPENSATION INSURANCE FUND** (effective September 1, 2001, the true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY**) and the name and address of its registered agent for service of process is

**MR. RUSSELL R. OLIVER, PRESIDENT  
221 WEST 6th STREET  
AUSTIN, TEXAS 78701.**

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Michael B. McShane  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge