APPEAL NO. 030843
FILED JUNE 3, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on February 18, 2003. The hearing officer resolved the disputed issue by deciding that, "[t]he correct date of injury cannot be determined as it is prior to January 1, 1991." The appellant (carrier) appeals. Neither the respondent (claimant), nor his attorney attended the hearing and there is no response on appeal.

DECISION

Affirmed on other grounds.

In an Employee's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41) dated March 26, 2001, the claimant claimed that exposure to cotton dust and other items caused him to have respiratory problems and gave a date of injury of _____. According to representations made in documents in evidence in the appeal, the Texas Workers' Compensation Commission (Commission) processed this claim as an old law claim under TEX. REV. CIV. STAT. ANN., art. 8306 *et seq* (Vernon Supp. 1967) (repealed 1989); the Commission issued a final award in this claim in January 2002; and an appeal was taken to district court, where the case is currently pending.

The carrier now disputes "the correct date of the claimant's injury" and asserts a date of injury that would bring this claim within the ambit of the 1989 Act. Neither the claimant, nor his attorney appeared at the hearing in this matter. In response to a letter from the hearing officer to show cause why the claimant failed to appear at the hearing, the claimant's attorney wrote that: (1) the Commission had lost jurisdiction over the claim because it had previously made a final ruling on the claim; (2) the case was presently pending before the district court; and (3) the district court had denied the carrier's Motion to Abate the district court proceeding.

The hearing officer entered the following decision and order:

> The 1989 Act does not apply to this claim because the correct date of injury is prior to January 1, 1991. The claimant's claim should be adjudicated as a claim under the prior workers' compensation law, TEX. REV. STAT. ANN., art. 8306 *et seq.* (Vernon Supp. 1967) (repealed 1989).

In essence, the hearing officer determined that she did not have jurisdiction over the claim because the date of injury was prior to January 1, 1991. We agree that she did not have jurisdiction over the claim but for a different reason. As is noted above, the Commission has already issued a final decision in this claim, having processed it as an

"old law" claim. The appeal of that decision is pending in the district court. Thus, the Commission has lost jurisdiction over the claim and is without the authority to resolve a date of injury issue. While it may have been a better practice for the Commission to resolve any dispute as to the correct date of injury of this claim before it made the decision of whether to process the claim under the "old law" or the 1989 Act, that procedure was not followed in this claim and it is simply too late to attempt to do so at this juncture. Texas Workers' Compensation Commission Appeal No. 030845-s, decided June 2, 2003.

The hearing officer's determination that she is without jurisdiction to resolve the date of injury issue under the 1989 Act is affirmed on other grounds.

The true corporate name of the insurance carrier is **ACE INSURANCE COMPANY OF TEXAS (f/k/a CIGNA Insurance Company of Texas)** and the name and address of its registered agent for service of process is

ROBIN MOUNTAIN
6600 CAMPUS CIRCLE DRIVE EAST, SUITE 200
IRVING, TEXAS 75063.

_____
Edward Vilano
Appeals Judge

CONCUR:

_____
Judy L. S. Barnes
Appeals Judge

_____
Gary L. Kilgore
Appeals Judge