

APPEAL NO. 033175  
FILED JANUARY 29, 2004

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 October 14, 2003. The only issue before the hearing officer was: "What is the correct date of the [respondent's (claimant)] injury?" The hearing officer resolved the disputed issue by deciding that, "[t]he 1989 Act does not apply to this claim because the correct date of injury is prior to January 1, 1991." In so deciding, the hearing officer concluded that the Texas Workers' Compensation Commission (Commission) does not have jurisdiction in this venue to adjudicate a claim with a date of injury prior to January 1, 1991. The appellant (carrier) appeals, asserting that the hearing officer abused her discretion by failing to find a correct date of injury, and that her determination that the claimant's date of injury is prior to January 1, 1991, is not supported by the evidence. The carrier asserts that its rights have been substantially prejudiced by the hearing officer's "arbitrary and capricious ruling." Neither the claimant nor her attorney attended the hearing and there is no response on appeal.

DECISION

Affirmed.

In an Employee's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41) dated September 7, 2001, the claimant claimed that exposure to cotton dust and other items caused her to have respiratory problems and gave a date of injury of \_\_\_\_\_. The carrier asserted that this was in fact a claim for an occupational disease injury and that the date of injury was within weeks of September 7, 2001, as is evidenced by the statement on the TWCC-41 indicating that the claimant knew her condition "may be related" to her employment "the last several weeks."

The disputed issue at the hearing was "What is the correct date of the claimant's injury?" The carrier appeared through its attorney and neither the claimant nor her attorney appeared at the hearing. 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 the hearing had been set in error and it was his understanding that the Commission was in the process of dismissing it. He further stated that he believed the hearing was set in violation of the Texas Penal Code (tampering with a governmental record) because the claimant was not even employed with the employer on September 7, 2001, the date listed as the date of injury on the set notice.

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. CIV. 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. There is minimal evidence regarding any date of injury. Based upon the TWCC-41 in evidence, the hearing officer determined that the claimant is pursuing a "specific incident" injury, which occurred on \_\_\_\_\_, and was not in fact claiming an occupational disease injury as argued by the carrier. This determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and is affirmed. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Once the hearing officer determined that the claimed injury occurred prior to January 1, 1991, she properly concluded that she was without jurisdiction to resolve the disputed issue. While the hearing officer did not make any findings of fact or conclusions of law regarding the date of injury, it is clear from her decision and order that she determined that the injury being claimed by the claimant was for a specific incident, and that the incident occurred prior to January 1, 1991. We have held that the 1989 Act applies only to injuries occurring on or after January 1, 1991. Texas Workers' Compensation Commission Appeal No. 92168, decided June 12, 1992. Since we have affirmed the hearing officer's decision that the claimant is pursuing an injury with a date of injury prior to the effective date of the 1989 Act, this claim must be adjudicated under the prior workers' compensation law. Texas Workers' Compensation Commission Appeal No. 93054, decided March 8, 1993. Accordingly, the claimant's claim should be adjudicated as an "old law" claim under the prior workers' compensation law, TEX. REV. CIV. STAT. ANN., art. 8306 *et seq.* (Vernon Supp. 1967) (repealed 1989).

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

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.**

---

Thomas A. Knapp  
Appeals Judge

CONCUR:

---

Gary L. Kilgore  
Appeals Judge

---

Edward Vilano  
Appeals Judge