

APPEAL NO. 033176
FILED FEBRUARY 2, 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 record closed on October 31, 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 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, which constitutes a violation of due process." Neither the claimant nor her attorney attended the hearing and in response to a notice to show cause for failing to attend the hearing, the claimant's attorney indicated that his client was not requesting a hearing and would not appear at the hearing.

DECISION

Affirmed.

In evidence is an Employee's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41) dated November 19, 2000, which reflects that the claimant claimed that exposure to cotton dust and other items caused her to have respiratory problems with a date of injury of _____. The carrier argued that this was in fact a claim for an occupational disease injury and that the date of injury that the claimant first knew the occupational disease or condition may be related to her employment was within the "last several weeks" of November 19, 2000, as is evidenced by the statement on the TWCC-41. The hearing officer determined from the TWCC-41 in evidence, that the claimant was pursuing a "specific incident" injury, which occurred on _____, and was not in fact claiming an occupational disease injury as argued by the carrier. 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. The 1989 Act applies only to injuries occurring on or after January 1, 1991. In Texas Workers' Compensation Commission Appeal No. 033175, decided January 29, 2004, we considered and rejected the carrier's argument in much the same circumstance and we do so again in this case.

The hearing officer's decision and order are 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.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert W. Potts
Appeals Judge