

APPEAL NO. 033177  
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 (CCH) was held on October 14, 2003. The hearing officer resolved the disputed issue by deciding that the 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) appealed, arguing that the hearing officer abused her discretion by failing to find a specific date of injury. The carrier additionally argues that the hearing officer's determination that the respondent's (claimant) 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 CCH and there is no response on appeal.

DECISION

Affirmed.

The sole issue before the hearing officer was "What is the correct date of the claimant's injury?" In an Employee's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41) dated June 6, 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 (alleged date of injury). 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 July 17, 2001, 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, not an occupational disease. The hearing officer additionally found that the claimant filed a TWCC-41 alleging a date of injury of (alleged date of injury). 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. Texas Workers' Compensation Commission Appeal No. 92168, decided June 12, 1992. We note that the carrier's argument on appeal has been previously considered and rejected in Texas Workers' Compensation Commission Appeal No. 033175, decided January 29, 2004, where we held that "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."

We affirm the decision and order of the hearing officer.

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  
660 CAMPUS CIRCLE DRIVE EAST, SUITE 200  
IRVING, TEXAS 75063.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Chris Cowan  
Appeals Judge