

APPEAL NO. 041965
FILED SEPTEMBER 15, 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 March 25, 2004. The hearing officer determined that the Texas Workers' Compensation Commission (Commission) does not have jurisdiction over the attorney's fees at issue in this case. The appellant (attorney herein) files a request for review arguing that the Commission does have jurisdiction over these fees. The respondent (carrier herein) requests that we affirm the decision of the hearing officer.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

The facts of this attorney's fees case are somewhat unusual, but are essentially undisputed. The claimant prevailed before the Commission on the merits of her claim.¹ The carrier sought judicial review of the Commission's decision and the attorney undertook to represent the claimant in court. The attorney states that both sides performed discovery in the lawsuit in district court and after the suit had been in court for approximately a year the carrier sought to nonsuit. The carrier's motion for nonsuit was granted on December 30, 2003. The attorney states that after the order granting nonsuit, he sought a hearing on attorney's fees before the district court, but the court did not grant a hearing on the matter until after the district court's jurisdiction over the matter had expired. The attorney argues that when in another case a district court had refused to consider his request for attorney fees more than 30 days after the entry of a judgment he had sought a writ of mandamus in the Texas Court of Appeals, which was denied by the Texas Court of Appeals. The attorney states that he had then sought a petition for review by the Texas Supreme Court, which was also denied. The attorney argues that this meant he has no remedy left in the courts to obtain approval for his attorney's fees in the present case once the district court refused to hear his request for attorney's fees within 30 days of entering the order for nonsuit. He argues that pursuant to Section 408.221, the Commission still has jurisdiction to grant his fees for work he performed on the claimant's case in district court and he requested the Commission to grant these fees. The Commission has denied granting the fees based upon lack of jurisdiction.

We find our decision in Texas Workers' Compensation Commission Appeal No. 040083, decided March 3, 2004, controlling in the present case. In Appeal No. 040083, *supra*, we held that when a district court had ruled upon the merits of claim and the attorney's fees for that claim our jurisdiction was pre-empted and the Commission had no authority to take further action. The attorney argues that Appeal No. 040083 does

¹ See our decision in Texas Workers' Compensation Commission Appeal No. 022561, decided November 20, 2002.

not control in the present case because the district court never reached the merits of his attorney's fees. However, by disposing of the attorney's request for attorney's fees, even if such disposition was by failing to approve the request to grant attorney's fees prior to losing jurisdiction, the district court has pre-empted our jurisdiction in the present case. Thus, we find no error in the hearing officer's decision that the Commission did not have jurisdiction in the present case.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge