

## APPEAL NO. 92479

On August 3, 1992, a contested case hearing was held with (hearing officer) presiding as the hearing officer. The hearing officer found that the claimant was an employee of (JAG) d/b/a (employer 1) and that (employer 1) was an independent contractor pursuant to the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-3.06(b)(2) (Vernon Supp. 1992) (1989 Act). Employer did not carry workers' compensation insurance and thus was not a party at the contested case hearing. (JG) (also referred to as JAG) has filed a request for review on the basis that: (1) the attorney for employer was not allowed to question a witness; (2) that employer's employees were covered under workers' compensation insurance written for (Contractor), a general contractor who had hired employer to do roofing on a house; and (3) that the 1989 Act should be liberally construed to provide benefits to injured workers. Neither the claimant below nor the carrier has filed an appeal.

## DECISION

The hearing officer found that the employee, MV, was an employee of (employer 1), an independent contractor. (JG), d/b/a (employer 1), filed this request for review of the decision of the hearing officer. We reject the employer's attempt to appeal because the employer lacks standing in this case.

Article 8308-6.41 provides for the appeal of the hearing officer's decision by a "party." (Employer 1), as the claimant's employer, was not a proper party to the proceedings and has no standing to pursue the appeal. Texas Workers' Compensation Commission Appeal Nos. 92110, decided May 11, 1992 and 92137, decided May 20, 1992 held that as the employer was not a party and had no standing to appeal, the appeals panel had no jurisdiction to consider the appeal. Tex. Worker's Comp Comm'n, 28 TEX. ADMIN. CODE § 140.1 (Rule 140.1) defines party to a proceeding as "a person entitled to take part in a proceeding because of a direct legal interest in the outcome." The employer lacks standing to appeal because the employer did not become a party to the benefit contested case hearing. Article 8308-5.10(l), (2), and (4) (Employer Bill of Rights) permits an employer certain rights in a contested hearing. While the exercise of an employer's right to be present and to present relevant evidence may involve such employer as a participant in a proceeding, an employer does not become a party unless the insurance carrier accepts liability, and the employer contests compensability, as indicated in Article 8308-5.10(4). Such was not the case at hand. We have earlier ruled in similar situations that an employer who is not a party to a contested case hearing may not appeal the decision. For further discussion see Texas Workers' Compensation Commission Appeal Nos. 92110 and 92137, *supra*.

Although not strictly necessary to the disposition of the case, we note that Article 8308-5.10(2) (Employer Bill of Rights) permits an employer the right to present relevant

evidence relating to an employee's claim at any proceeding. Our dismissal of the appeal should not be interpreted as approval of the hearing officer's ruling denying the employer an opportunity to present evidence by calling (Contractor), the general contractor who had previously testified for the employee, as the employer's own witness.

The employer, who did not become a party to the contested case hearing below and was merely a participant, lacks standing to appeal. Accordingly, the appeal is dismissed.

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Stark O. Sanders, Jr.  
Chief Appeals Judge

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Joe Sebesta  
Appeals Judge