APPEAL NO. 950881

This appeal is considered in accordance with the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on remand on April 24, 1994. The matter had been remanded by the Appeals Panel in Texas Workers' Compensation Commission Appeal No. 941698, decided February 2, 1995, for the sole purpose of receiving into evidence the claim for compensation contained in the files of the Texas Workers' Compensation Commission (Commission) prior to an amended claim filed in September 1993. This was with regard to the issue of whether claimant timely filed a claim for compensation with the Commission or had good cause for any failure to timely file a claim. The claimant was PW, who had been injured on _____.

The hearing officer, who found in the first session of the hearing (and was affirmed) that the claimant was the borrowed servant of (Engineering Company) on the date of his injury (and not the leasing company), determined that claimant timely filed a claim for compensation on June 26, 1992, after a copy of the claim was put into the record.

The carrier has appealed the decision, arguing that the June 1992 claim identified the leasing company as employer and not its insured, and consequently does not represent a timely filed claim for compensation. No response was filed.

DECISION

Affirmed.

We incorporate by reference all facts contained in our earlier discussion of this case in the decision, which remanded the case.

In our previous decision, we noted that the only claim in the record at that time was an amended claim dated September 9, 1993, plainly a year after the injury. We stated:

> Filing a claim with the Commission should be a matter that can be readily ascertained from the records of the Commission, and is one of those documents that should be included in the record by the hearing officer as part of the need to complete the record. Texas Workers' Compensation Commission Appeal No. 941171, decided October 17, 1994. We are remanding for consideration of the 1992 claim, if in Commission records; reference to a claim in a BRC report provides no evaluation of the document by the hearing officer. If a claim was not filed, it will be incumbent upon the hearing officer to determine whether exceptions to the claim filing requirement exist.

Section 409.003 requires an injured employee to file a claim for compensation within a year from the date of injury. It is failure to file the claim that relieves the carrier

from liability. Tex. W. C. Comm'n, 28 TEX. ADMIN. CODE § 122.2 (Rule 122.2) indicates that the claim "should" be on a form TWCC-41 and "should" include certain information set out in the rule. One of items of information which "should" be included is the name and address of the employer, and the name of the immediate supervisor.

The carrier cites no authority for its position that a timely filed TWCC-41 must be considered "untimely" if all information contained therein is not accurate. Neither the rule nor the statute provides for excusing a carrier from liability based upon inaccurate or mistaken information regarding matters not involving the injury, most especially when the information can be readily resolved through investigation of the claim. Previous case law under the old act indicates that a timely filed claim may be amended up to the point that the workers' compensation agency disposes of the claim; claims are not regarded as pleadings and not therefore guided by strict rules of formality, and a claim of "injury" is sufficient to invoke the agency's jurisdiction. *See* Booth v. Texas Employers' Insurance Ass'n, 132 Tex. 237, 123 S.W.2d 322 (1938); Select Insurance Co. v. Patton, 506 S.W.2d 677 (Tex. Civ. App.-Amarillo 1974, writ ref'd n.r.e.).

We note that the record developed at the earlier hearing contains a TWCC-1 Employer's Report of Injury which was filed by the Engineering Company on September 16, 1993; one may infer from the accompanying cover letter that the Engineering Company had not previously filed such a report of injury due to its position that the leasing company was claimant's employer. Because we affirm the hearing officer's decision that claimant filed a timely claim for compensation, we will not directly address whether the time for filing of a claim specifically naming the Engineering Company was tolled in accordance with Section 409.008. We observe that the logical consequence of carrier's argument that a claim must specifically identify the employer by name would be that the one year limit for filing a claim would not begin until that named employer filed its notice of injury.

For the reasons cited, the decision and order of the hearing officer are affirmed.

Susan M. Kelley
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Alan C. Ernst
Appeals Judge