

APPEAL NO. 92099  
MAY 21, 1992

On January 30, 1992, a contested case hearing was held in (city), Texas, with (hearing officer) presiding as hearing officer. The hearing officer determined that the appellant, did not sustain a compensable injury at any time in the course and scope of her employment as a receptionist with (employer).

The appellant sent an appeal of the hearing decision on March 6, 1992, to the (field office) of the Texas Workers' Compensation Commission (Commission). The appeal was subsequently sent to the central (city) office of the Commission, postmarked March 10, 1992, and received on March 12, 1992. The appeal states that the appellant received the decision of the hearing officer on February 17, 1992.

DECISION

Finding that appellant's request for review was not timely filed, it cannot be considered. The decision of the hearing officer is affirmed by operation of the Texas Workers' Compensation Act (1989 Act), TEX. REV. CIV. STAT. ANN. Art. 8308-6.34(h) (Vernon's Supp. 1992). Our reasoning is the same as that discussed in Texas Workers' Compensation Commission Appeal No. 92036 (Docket No. HO/91-103472/01-CC-HO41) decided March 11, 1992.

Article 8308-6.41(a) (1989 Act) provides in part as follows:

"A party that desires to appeal the decision of the hearing officer shall file a written appeal with the appeals panel not later than the 15th day after the date on which the decision of the hearing officer is received from the division of hearings and shall on the same date serve a copy of the request on the other party . . . ."

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(a)(3) (TWCC Rules) provides that a request for review of the hearing officer's decision shall be filed with the Commission's central office in Austin "not later than the 15th day after receipt of the hearing officer's decision; . . ." Rule 143.3(c) goes on to provide the following:

"(c)A request made under this section shall be presumed to be timely filed or timely served if it is:

- (1)mailed on or before the 15th day after the date of receipt of the hearing officer's decision, as provided in subsection (a) of this section; and
- (2)received by the commission or other party not later than the 20th day after the date of receipt of the hearing officer's decision."

The hearing officer signed his Decision and Order on February 4, 1992. By letter dated February 7, 1992, the Commission's Division of Hearings & Review forwarded to the parties a copy of the decision and a fact sheet explaining what to do if an appeal was desired. This letter also stated the office and the address to which any such appeal should be directed.

Because appellant's request for review states the date she received the Commission's transmittal letter, we must count 15 days from that date to determine when the appeal was due to be filed. The appeal was due no later than March 3, 1992.

Cases concerning appeals from the former Industrial Accident Board, as provided for by Section 5 of Article 8307 of the Texas Revised Civil Statutes Annotated (Vernon Supp. 1990), treated appeal time limits as jurisdictional. Texas Workers' Compensation Commission Appeal No. 91070 (Docket No. DA-00009-91-CC-1) decided December 19, 1991. See also Clawson v. Texas Employer's Insurance Ass'n, 475 S.W.2d 735 (Tex. 1972).

The hearing officer's decision is affirmed.

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Susan M. Kelley  
Appeals Judge

CONCUR:

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Stark O. Sanders, Jr.  
Chief Appeals Judge

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Philip F. O'Neill  
Appeals Judge