

## APPEAL NO. 92183

On February 19, 1992, a contested case hearing was held in (city), Texas, with (hearing officer) presiding as hearing officer. The hearing officer determined that (claimant), the appellant, sustained a compensable injury in the course and scope of her employment for (employer) on (date of injury), but did not suffer disability therefrom. He further found that she incurred a subsequent repetitive trauma injury relating to subsequent employment from another employer, and that her disability resulted therefrom. Appellant was subsequently employed by (employer), and her last day of employment at the time of the hearing was October 9, 1991.

Appellant disputes that she incurred an injury while employed by the second employer. She seeks temporary income benefits beginning the date her employment was stopped by the second employer. Respondent replies that the appeal was not timely filed with the Texas Workers' Compensation Commission (Commission) within fifteen days, in accordance with Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. Art. 8308-6.41(a) & (b) (Vernon Supp. 1992) (1989 Act), and that the decision of the hearing officer should be upheld.

### DECISION

Finding that the appeal was not timely filed with the Commission, we cannot consider it. Consequently, we take no position on the correctness of the hearing officer's determination. We would note that the decision indicates that appellant is entitled to medical benefits from respondent for treatment of her (date of injury). The decision further indicates that appellant should file workers' compensation claims against the subsequent employers for benefits.

On the matter of timely filing of the appeal, we note that the 1989 Act, Article 8308-6.41(a) 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 (city) "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."

Finally, Rule 102.5, regarding mailing of communications from the commission, subsection (h), states:

For purposes of determining the date of receipt for those notices and other written communications which require action by a date specific after receipt, the commission shall deem the received date to be five days after the date mailed.

If a due date for a filing falls on a weekend or a legal holiday, the due date is the next business day. Rule 102.3 (a)(3).

The hearing officer signed his Decision and Order on February 20, 1992. The Commission's Division of Hearings & Review mailed to the parties a copy of the decision on March 17, 1992, with a fact sheet explaining what to do if an appeal is desired. Appellant's request for review does not state the date she received the Commission's transmittal letter. The copy contained in our files is a page date-stamped by "(Company)", on March 30, 1992. Documents in the record of the case indicate that this is the adjuster for the insurance carrier. We have determined that the Commission's (city) field office supplied appellant with the (city) address of the Appeals Panel, on March 30, 1992. However, a copy of the appeal was not received by the Commission's (city) central office until sent by telephone document transfer to the (city) field office by (Company), and in turn forwarded by the (city) office to the Appeals clerk, all on May 11, 1992.

Applying Rule 102.5, the deemed date of appellant's receipt of the hearing officer's decision is March 22, 1992. Fifteen days from March 22 yields a due date for filing an appeal of April 6, 1992. If appellant had filed an appeal in (city) on or before that date, her appeal would have been timely filed.

There is no record of the appeal having been filed with the Appeals Panel within the time frame required by statute, so we cannot review the hearing officer's decision. Because respondent has not timely appealed the determination that a compensable injury

was sustained on (date of injury), in the course and scope of employment for its insured, it is liable for medical benefits for treatment of the injury in accordance with Article 8308-4.61(a).

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Susan M. Kelley  
Appeals Judge

CONCUR:

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Stark O. Sanders  
Chief Appeals Judge

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Philip F. O'Neill  
Appeals Judge