

## APPEAL NO. 92223

On March 27, 1992, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. She determined that claimant, respondent herein, was injured in the course and scope of employment and that the employer, (employer), had not made a *bona fide* offer of employment that met the restrictions imposed upon his return to work. She ordered that benefits be paid. A letter was received from the county judge on behalf of the commissioners' court stating, "an appeal is in order." This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act), TEX. REV. CIV. STAT. ANN. arts. 8308-1.01 through 11.10 (Vernon Supp 1992).

### DECISION

Finding that the appeal was not timely filed, the decision of the hearing officer has become final in this case.

The letter from the Texas Workers' Compensation Commission's Division of Hearings & Review which provided the parties with copies of the decision of the contested case hearing officer was dated April 15, 1992 and was mailed on April 16, 1992. Appellant does not state on what date it received the decision, but its letter referring to an appeal is dated May 22, 1992, and the envelope in which it arrived at the Commission is postmarked May 26, 1992.

Article 8308-6.41(a) of the 1989 Act provides that an appeal is to be filed with the appeals panel not later than the 15th day after the date the decision of the hearing officer is received. The hearing officer stated at the end of the hearing, on the record, the requirement that an appeal must be made within 15 days of receipt of the decision of the hearing officer. Since appellant does not state the date it received the decision, provisions of Tex W. C. Comm'n, 28 Tex Admin Code § 102.5(h) (rule 102.5) apply. That rule states that the received date shall be deemed to be five days after the date mailed. Therefore five days after April 16th is April 21st, and the 15 days for appeal began to run on April 22, 1992. The 15th day thereafter is May 6, 1992. If the appeal were postmarked within the 15 days specified, then rule 143.3 allows 20 days from the date the decision was received by appellant for the appeal to reach the commission. With May 6, 1992, as the 15th day after the date deemed that the decision was received, and May 26, 1992, as the date clearly postmarked on the envelope containing the appeal, no mailing time can be added to allow for receipt by the commission. The appeal is not timely and cannot be considered. See Texas Workers' Compensation Commission Appeal No. 92215 (Docket No. redacted) decided July 1, 1992, and Texas Workers' Compensation Commission Appeal No. 92134A (Docket No. redacted) decided May 20, 1992.

The decision of the hearing officer has become final under Article 8308-6.34(h) of the 1989 Act.

---

Joe Sebesta  
Appeals Judge

CONCUR:

---

Susan M. Kelley  
Appeals Judge

---

Lynda H. Nesenholtz  
Appeals Judge