

APPEAL NO. 92236

A hearing on remand was held on May 19, 1992 at (city), Texas, (hearing officer) presiding as hearing officer. The hearing officer determined that he did not have jurisdiction to hear the case on remand. Appellant, in this "Second Request for Review," asks that we set aside the hearing officer's decision, that the appeals decision ordering the remand be given full force and effect, and that a rehearing be allowed under the appeals panel's decision.

DECISION

The requested relief is denied and the determination of the hearing officer is affirmed.

This case involves the very strict time limits imposed under the Texas Workers' Compensation Act (TEX. REV. CIV. STAT. ANN. art 8308-6.42(c)) (1989 Act) for the filing of an appeals panel decision. This article provides in pertinent part:

(c)The appeals panel shall issue its decision which shall determine each issue on which review was requested. The decision shall be in writing and issued not later than the 30th day after the date on which the written response to the request for appeals is filed, and the appeals panel shall file a copy of the decision with the division director. A copy of the decision of the appeals panel shall be sent to each party not later than the seventh day after the decision is filed with the Commission. If the appeals panel does not issue its decision in accordance with this subsection, the decision of the hearing officer shall become final and shall constitute the final decision of the appeals panel.

Unfortunately, the response to the request for appeal in this case did not reach the appeals panel during the pendency of the appeal and the case was processed as a "no response filed" case. As a "no response filed" case, the decision due date was correctly calculated in the computer docket as April 22, 1992. The decision was filed on April 21, 1992 and it was only later learned (upon the convening of the instant hearing on remand) that a response had been filed in the (city) Central Office of the Texas Workers' Compensation Commission and date stamped March 20, 1992. The 30 day period for filing an appeals panel decision, marking from March 20, 1992, is April 20, 1992. See Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.3(3). Hence, by operation of the clear and unambiguous language of the statute, Article 8308-6.42(c) of the 1989 Act, the decision of the hearing officer became final and constituted the decision in the case. This statutory provision does not make any exceptions for the appeals panel filing a decision after the 30th day because of some procedural or clerical shortcoming or for good cause shown or for any reason. Rather, the provision specifically provides that the hearing officer's decision becomes the final decision.

Where the language of a statute is clear and unambiguous, extrinsic aids and rules

of statutory construction are not appropriate and the statute should be given its common, everyday meaning. Cail v. Service Motors, Inc., 660 S.W.2d 814 (Tex. 1983). We believe the language in Article 8308-6.42(c) is clear and unambiguous. Further, the provisions of the 1989 Act do not set out any exceptions for an appeals panel's decision not being filed not later than the 30th day after the filing of a response. To the contrary, it provides that a specific thing happens: "the decision of the hearing officer shall become final and shall constitute the final decision of the appeals panel." It is, as indicated, unfortunate and regrettable that the response did not reach the appeals panel resulting in the appeals panel's decision not being filed within the time provisions specified in Article 8308-6.34(c); however, by operation of that article, the hearing officer's decision became final. The hearing officer was correct in stating that he had no jurisdiction to further hear the case. We do not find any statutory or other basis to review a final decision. We conclude we lack authority or any implied or inherent power to review in a judicial capacity, an order or decision which, by operation of the statute, has become final. Public Utilities Commission of Texas v. Brazos Electric Power Cooperative, Inc., 723 S.W.2d 171, 173 (Tex. App.-Austin 1986, writ ref'd n.r.e.).

Appellant suggests the instant situation is appropriate for the application of a Bill of Review. Again, there is no statutory authority for us to invoke such powers. Bills of Review are statutorily provided for judicial bodies in the Texas Rules of Civil Procedure (Vernon's Ann. Texas Rules Civ. Proc., Rule 329b(f)); however, we find no such authority for administrative bodies, regardless of its desirability.

With regard to the appellant's argument that she is being denied a constitutional right to due process, we observe that the Supreme Court of Texas has stated "it is axiomatic that due process requires but one adequate hearing in administrative proceedings." Browning-Ferris, Inc. v. Johnson, 644 S.W.2d 123, 127 (Tex. App.-Austin 1982, writ ref'd n.r.e.). It would seem that the legislature could, in the interest of the expeditious resolution of cases, specify a time limit on the filing of an appeals panel's decision regardless of the circumstances. We do not decide this matter, however, as we have previously held an administrative agency such as the Texas Workers' Compensation Commission, does not have the power or authority to determine the constitutionality of statutes. Texas Workers' Compensation Commission Appeal No. 92124 (Docket No. redacted) decided May 11, 1992.

In citing the Texas Constitution for the guarantee "that all courts shall be open and that every person shall have a remedy by due course of law . . .," appellant urges, in essence, that to deny relief in this case would be a denial of due process. This argument is answered, of course, by the fact that the 1989 Act specially provides for judicial review of Commission decisions. Articles 8308-6.61-6.64.

Finding no statutory basis or other legal authority to disturb the decision which has become final by operation of Article 8308-6.42(c), the request for review is dismissed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Philip F. O'Neill
Appeals Judge