

## APPEAL NO. 92328

On June 10, 1992, a contested case hearing was held in (city), Texas, in regard to attorney's fees as provided in the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. arts. 8308-1.01 through 11.10 (Vernon Supp. 1992) and Tex. W. C. Comm'n, 28 TEX. ADMIN. Code § 152.1 through 152.5. The hearing officer, (hearing officer), reduced attorney's fees awarded to appellant to zero. Appellant asserts that the hearing officer had no jurisdiction to do so since a request for such hearing was not timely made. He also says that the hearing officer erred in making findings of fact and that the decision is against the great weight and preponderance of the evidence.

### DECISION

Since Finding of Fact No. 6 does not specify a day on which the contested case hearing was requested, we reverse and remand for clarification of that finding.

The hearing officer in the "Statement of Evidence" states that the May 15, 1992, order regarding attorney fees was sent to claimant (respondent herein) on May 18, 1992. The record should reflect that evidence of such date was admitted or that the hearing officer took official notice of such evidence in the claim file of this agency. The hearing officer also states that appellant did not attend the hearing. Perhaps appellant does not

consider himself to be a party when an attorney's fee hearing is held, but we note that Article 8308-6.34(f) requires all parties to attend the hearing.

The manner in which an unrepresented claimant requests a hearing as to whether fees for an attorney's service are payable has been addressed in Texas Workers' Compensation Commission Appeal No. 92329 (Docket No. redacted) dated August 24, 1992. That decision approved a verbal request for a hearing.

Appeal No 92329, along with Texas Workers' Compensation Commission Appeal No. 92307 (Docket No. redacted) dated August 24, 1992, decided, however, that the time period in which to request a hearing begins with the date of the commission's order, not the date that it was received or should have been received by the requesting party. This opinion will follow the determination of those two appeal decisions as to inception of time in which to request a hearing.

We note that the hearing officer, under "Statement of Fees," said it was respondent's position that he requested the hearing the same day that he received the order. The tape of the hearing indicates, however, that respondent testified that he requested the hearing the same day he received the order. In making Finding of Fact No. 6, the hearing officer either disregarded an indication in a commission file that shows a hearing was requested on May 27, 1992 (that file was neither offered into evidence nor officially noticed); or, the hearing officer considered the file (which may be admissible as a government record or officially noticed) but assigned more weight to the testimony of the respondent as to when

he made his request than she did to the reference to a date in the file. If the second possibility represents what occurred, then the record, when considered under this remand, should reflect that such evidence in the file was admitted or officially noticed.

Having determined that the time to request a hearing is limited to seven days from the date of the commission order, any question concerning this period of time necessitates that a finding as to the day of request be as specific as possible. As Finding of Fact No. 6 is presently stated, it uses the phrase, "within approximately four days." If, upon a review of all the evidence, that finding of fact can be made to state a day of request, then the question as to an appropriate time to request a hearing will be more accurately addressed. Should the hearing officer need more information, she has the authority to request it. We note that appellant states in his appeal that he received a copy of the order "on or about May 20, 1992."

In remanding this case we do not attempt to impose any restriction upon the manner of clarifying Finding of Fact No. 6 or of making any appropriate finding. We do not indicate what the substance of any finding should be, and the extent to which evidence of record, if any, is further developed to reach the finding(s) is solely for the hearing officer to decide.

Reversed and remanded. Pending resolution of the remand, a final decision has not been made in this case.

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Joe Sebesta  
Appeals Judge

CONCUR:

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Stark O. Sanders, Jr.  
Chief Appeals Judge

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Philip F. O'Neill  
Appeals Judge