

## APPEAL NO. 92339

On June 3, 1992, a contested case hearing was held in (city), Texas, with (hearing officer) presiding as the hearing officer. Appellant contends that he has not reached maximum medical improvement as found by the hearing officer, and requests that we reinstate his temporary income benefits under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-1.01 *et seq.* (Vernon Supp. 1992) (1989 Act). Respondent, the employer's workers' compensation insurance carrier, responds that appellant has failed to obtain appellate jurisdiction because his appeal was not timely filed, and that the hearing officer's findings, conclusions, and decision are supported by sufficient evidence. Respondent requests that we affirm the decision.

### DECISION

Appellant's request for review was not timely filed. Consequently, the decision of the hearing officer has become final. Appellant did not appear in person or through a representative at the benefit review conferences or the contested case hearing.

The letter from the Texas Workers' Compensation Commission's (Commission) Division of Hearings & Review transmitting the hearing officer's decision to the parties is dated June 10, 1992, and Commission records show the decision was mailed to the parties on June 11, 1992. The address to which appellant's copy of the decision was mailed is the address for appellant maintained in the Commission's files. Pursuant to Article 8308-6.41(a), a party that desires to appeal the decision of the hearing officer must file a written appeal with the Appeals Panel not later than the 15th day after the date on which the decision is received. Pursuant to Tex. Workers' Comp. Comm'n, 28 TEX. ADMIN. CODE Sec. 102.5(h), appellant is deemed to have received the decision on June 16, 1992, which is five days after the date the decision was mailed. Appellant was required to file his appeal by Wednesday, July 1, 1992, which was the date 15 days after the deemed date of receipt. Appellant filed two letters requesting review, one dated July 16, 1992, and one dated July 29, 1992. The envelope transmitting the first letter is postmarked July 17, 1992, and the letter was received by the Commission on July 21, 1992. Rule 143.3(c) provides for a presumption of timely filing if the request for review is mailed on or before the 15th day after the date of receipt of the decision, and the request is received by the Commission not later than the 20th day after the date of receipt of the decision. Appellant would have had to mail his request for review by July 1, 1992, in order to meet the first requirement for this presumption to apply. As noted, he did not mail his first letter requesting review until July 17, 1992. We conclude that appellant's request for review was not timely filed in accordance with Article 8308-6.41(a) and Rule 143.3.

In his first letter, appellant states that he received "the letters" on July 15th, and in his second letter states that he did not know of "any hearings" because he received notice of hearing on July 15th. Benefit review conferences were held on April 2nd and 20th, and the contested case hearing was held on June 3rd. The benefit review conference report lists appellant's address as the same address to which the decision was sent. The notice of contested case hearing dated May 4th was also sent to the same address as the decision.

This case is distinguishable from Texas Workers' Compensation Commission Appeal No. 92237 (Docket No. redacted) decided July 22, 1992, in that the notice of hearing was made a part of the record in this case, and the notice sets forth the date, time, and place of hearing. Appellant states that while he was receiving benefits he was staying with his wife at an address different than the one to which the notice of hearing and decision were sent and that the employer and respondent knew of this other address. However, appellant does not assert that the address to which the notice and decision were sent was not the address supplied to the Commission. Moreover, appellant does not assert that he notified the Commission of his new address nor is there any indication in the hearing record that a new address was given to the Commission. Rule 102.5 sets forth general rules for written communications to and from the Commission. Section (a) of that rule provides that: "All notices and written communications to the claimant or claimant's representative will be mailed to the last address supplied by the claimant or representative." Rule 102.4(a) provides examples of sources from which the last address may be supplied. There is no indication in the record that appellant had a representative nor that he supplied to the Commission an address different than the one to which the notice of hearing and decision were sent. We conclude that the Commission followed Rule 102.5(a) in mailing the hearing notice and decision to the last address which the record indicates appellant supplied to the Commission. *Compare* Texas Workers' Compensation Commission Appeal No. 92199 (Docket No. redacted) decided June 26, 1992, wherein the claimant supplied a new address to the Commission at the hearing.

In the absence of a timely appeal, the decision of the hearing officer became final by operation of law. Article 8308-6.34(h); Rule 142.16(f); Texas Workers' Compensation Commission Appeal No. 92265 (Docket No. redacted) decided August 5, 1992. This decision will be sent to appellant at the new address he supplied to the Commission in his request for review which is: (address).

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Robert W. Potts  
Appeals Judge

CONCUR:

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Stark O. Sanders, Jr.  
Chief Appeals Judge

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Joe Sebesta  
Appeals Judge