

## APPEAL NO. 92354

A June 16, 1992, contested case hearing was held in (city), Texas, with (hearing officer) presiding. The hearing was held at the request of the claimant (respondent/claimant herein) to review an April 3, 1992 order of the Texas Workers' Compensation Commission (Commission) approving attorney's fees of \$2,475.00 to respondent/claimant's attorney (appellant herein). The hearing was held pursuant to the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. arts. 8308-1.01 *et seq.* (Vernon Supp. 1992) (1989 Act).

The hearing officer held that appellant's March 12, 1992 application and order for attorney's fees does not comply with the requirements of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE §152.3 (Rule 152.3), and accordingly set aside the April 3rd order without prejudice to permit appellant to resubmit his application for attorney's fees in accordance with that rule. Appellant contends the hearing officer erred in denying his motion to dismiss; in the alternative, he claims the hearing officer's decision on attorney's fees is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. Respondent/claimant argues that the hearing officer's decision and order should be upheld.

### DECISION

We reverse the decision of the hearing officer and render a new decision.

Appellant, who failed to appear at the contested case hearing, filed an appearance, objection and motion to dismiss the contested case hearing. Among other things, appellant argued that the hearing should be dismissed because it was not requested by respondent/claimant within seven days of the Commission order as required by Rule 152.3(f). Respondent/claimant testified that he requested a hearing on the April 3, 1992 order on April 30th, and a copy of this letter was included in the record. This is clearly outside the time limit provided by the rule. See Texas Workers' Compensation Appeal No. 92037 (Docket No. redacted), dated August 24, 1992; Texas Workers' Compensation Appeal No. 92327 (Docket No. redacted), dated August 28, 1992.

Respondent/claimant testified that he did not understand the significance of the April 3, 1992 order until April 24th, when respondent/carrier began taking money out of his benefit check in accordance with the order. When he talked to respondent/carrier and understood the reason for the deduction from his check, he said he called the Commission and was told that he could file an appeal. The hearing officer denied appellant's motion to dismiss on the ground that respondent/claimant did not understand the meaning of the order. We find this is not a legally sufficient reason to relax the requirement that the request for hearing be timely filed. An individual's failure to understand the importance of an order is not the kind of injustice that would allow the setting aside of an otherwise absolute filing requirement. See, e.g. Taylor v. Argonaut Southwest Insurance Co., 817 S.W.2d 722 (Tex. App.-Amarillo 1991, no writ history).

Because of our ruling on lack of timeliness of the request for hearing, we will not address the merits of this case.

The decision and order of the hearing officer is reversed and the April 3, 1992 order of the Commission is reinstated.

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Lynda H. Neseholtz  
Appeals Judge

CONCUR:

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Stark O. Sanders, Jr.  
Chief Appeals Judge

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Susan M. Kelley  
Appeals Judge