

APPEAL NO. 92506

This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act), TEX. REV. CIV. STAT. ANN. arts. 1.01 through 11.10 (Vernon Supp 1992). On July 2, 1992, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. He held that claimant, appellant herein, was compensably injured on (date of injury), had disability from July 11 to December 26, 1991, and is entitled to temporary income benefits (TIBS). Claimant appeals saying that he had disability from July 11, 1991 to the present and that he had mental trauma. Carrier, respondent herein, states that the appeal was not timely and notes that the agreed issue at the hearing as to disability only included the period from July 11 to December 26, 1991.

DECISION

Finding that the decision of the hearing officer is sufficiently supported by evidence of record, we affirm.

I

The carrier asserts that the appeal was not timely filed by referring to the date on the letter which distributed the hearing officer's decision as compared to the date of appeal. While it is true that the first letter distributing the decision was dated August 20, 1992 and was sent on August 21st, that letter was addressed to incorrect addresses for both claimant and his attorney. The decision was remailed to claimant's attorney on September 4, 1992, and the appeal is dated September 18, 1992 and was received on September 23, 1992. The Appeals Panel has previously held that when the Commission fails to comply with Tex. W. C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(a) (Rule 102.59(a)) and does not send the decision to the address provided by the claimant, it should not impose its Rule 102.5(h) which deems receipt five days after the date sent. See Texas Workers' Compensation Commission Appeal No. 92199, dated June 26, 1992. The appeal complied with all time limits imposed after the hearing officer's decision was correctly mailed to claimant's attorney.

II

Claimant worked as a repairman of small engines for a national chain store. On (date of injury), he was working on a lawn mower when the head shattered, breaking his glasses and striking his right eye. Other employees immediately helped him to rinse the eye and he again bathed it that night when at home. The eye still became swollen and red. He saw a doctor the next day who found no foreign body in the eye, did see some infection, and returned him to work. Claimant then saw Dr. M, an ophthalmologist, two weeks later who wanted to do further testing for which claimant did not have the money; this doctor said it would have been much better if claimant had seen her or another ophthalmologist much sooner after the injury.

Claimant then saw Dr. N, a neurologist, when he went to an emergency room,

apparently in June 1991. Dr. N referred him to Dr. R, who also wanted to do more testing which claimant could not afford. Claimant then saw Dr. E., a neurologist, in July 1991. He found that claimant's headaches and ocular pain were "posttraumatic in nature." After indicating in notes made in August and September that claimant could probably return to work, Dr. E, on December 26, 1991 in a letter to the carrier, said that claimant could return to work. In reviewing claimant's case, Dr. E said, "it is possible that someone could have a conjunctivitis from foreign body and have pain that outlasts the actual inflammation. It is very, very likely that this gentleman developed significant tension and anxiety related to the initial injury and developed tension headaches, and that this became a self-sustaining problem because of his pre-morbid personality profile." Dr. E also saw claimant in January 1992 and his note then makes it clear that claimant continues to need medical care.

The above medical evidence is sufficient to support the hearing officer's determination that claimant injured his eye on (date of injury) and that his eye injury caused him to be unable to obtain and retain work, until December 26, 1991, at wages earned before he was hurt. The hearing officer also found that claimant was first unable to work on July 11, 1991. The appeal does not assert that this determination is error, but says only that it does not address the period after December 26, 1991.

The issues reported by the BRC were whether claimant has a compensable injury based on mental trauma and whether claimant has disability as a result of the (date of injury) injury. The hearing officer, at the beginning of the hearing, announced the issues to be the mental trauma question, but then narrowed the disability issue by stating, to the effect, "did claimant suffer disability from July 11, 1991 through December 26, 1991 as a result of the (month) injury?" Counsel for claimant agreed that the issues were as stated. The BRC officer commented in his report that claimant had disability from July 11th through December 26th, but, the same page of that report states the "claimant's position" to be that he was owed TIBS from (date) through the present. Article 8308-6.15 of the 1989 Act provides for resolution of a dispute at the BRC by agreement or settlement reached by the parties. It does not empower the benefit review officer to decide any dispute or to limit the time period or nature of a dispute absent the agreement or settlement of the parties.

This case is somewhat unclear also because the hearing officer, in finding that the incident of (date of injury) did not cause mental trauma, referred to "independent" mental trauma. Appellant then asserted error in this finding but merely quoted the entire finding as error, without indicating whether he was aggrieved by the use of the "independent" prefix. This finding, whether it looks to mental trauma as resulting from a physical injury to a part of the body (see Peeples v. Home Indem. Co., 617 S.W.2d 274 (Tex. Civ. App.-San Antonio 1981, no writ) wherein psychiatric treatment was necessary as a result of injury to a worker's knee), or to mental trauma as being "independent," does not affect the outcome of this decision because the hearing officer found that disability was caused by the eye injury and extended throughout the period in question.

Since there was no objection when the issue as to disability was clearly stated to be

limited to a distinct period at the hearing, the claimant's appeal that disability should have been found beyond the extent of that period is without merit. Similarly, the decision we hereby affirm only extends to a determination that a "separate" mental trauma injury was not suffered on (date of injury) and that disability did occur from July 11 through December 26, 1991; questions as to disability before July 11th and after December 26th clearly have not been addressed by the issues in this hearing of July 2, 1992. As stated in Texas Workers' Compensation Appeal No. 92257, dated August 3, 1992, disability may be addressed at different times in the adjudication process. In addition, we note that Article 8308-4.21 of the 1989 Act provides that income benefits for a compensable injury shall be paid when they accrue without the necessity of an order of the Commission, and Article 8308-4.22 does not tie payment of medical benefits to payment of income benefits.

The decision and order are based on sufficient evidence of record and are affirmed.

Joe Sebesta
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Philip F. O'Neill
Appeals Judge