

APPEAL NO. 92568

A contested case hearing was held in (city), Texas, on August 26, 1992, (hearing officer) presiding as hearing officer. She determined the appellant's (claimant) stress reaction experienced by her on (date of injury) was not a compensable injury since it did not arise out of and in the course and scope of her employment. The hearing officer also determined that the respondent (carrier) adequately disputed the claim. Accordingly, benefits were denied under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-1.01 *et seq* (Vernon Supp. 1992) (1989 Act). Claimant appeals the hearing officer's decision. Carrier initially complains that the appeal was not timely filed and argues that the decision is correct and urges that it be affirmed.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and not finding any material error, we affirm.

Initially we note that the claimant's notice that she desired to appeal her case was timely although a subsequent refinement of her basis for her appeal was not. We will consider her request for an appeal of her case.

The contested case hearing officer's decision was mailed to the claimant on September 14, 1992, and her written notice that she desired to appeal was received in the (city) Field Office of the Texas Workers Compensation Commission on September 28, 1992. This correspondence indicated her desire to appeal but does not indicate if she notified the opposing party. The subsequent refinement of the appeal, which does indicate service on the opposing party, was not received until October 23, 1992, and is thus untimely.

The evidence is fairly and adequately set out in the decision of the hearing officer and is adopted for purposes of the decision. Briefly, claimant states she suffered a stroke because of undue stress on the job. The only medical evidence on the nature of any injury indicates the claimant was hospitalized on (date of injury) with chest pain which the doctor opined was a stress reaction. The evidence established that the claimant had difficulty or a personality clash with her supervisor in 1989 which resulted in her being placed, pursuant to her request, in a new position. She subsequently started having work-related difficulties with her supervisor in this new position. According to the claimant, her supervisor began to indicate that she, the supervisor, was not happy with her work. Claimant said that this was not fair and upset her as she took great pride in her work. The claimant testified this caused her great stress which culminated in what she describes as a stroke on (date of injury). She acknowledged she suffered from diabetes and hypertension and was also upset about her father who was hospitalized with cancer. She testified that her doctor told her the stress at work could cause her to have a stroke.

The carrier disputed the claim at the outset on the basis that they had been prevented from speaking directly with the claimant, that the claimant's daughter stated that the claimant

had had a stroke at home, that the claimant was not in course and scope, and that the carrier's contact with the medical provider indicated that the provider had no knowledge of the claimant. The hearing officer found this to be a sufficient basis to adequately dispute the claim. We agree that it adequately fulfills the requirements of the 1989 Act and Texas Workers' Compensation Commission Rule 124.6, Tex. W. C. Comm'n, 28 TEX. ADMIN. CODE § 124.6. See Texas Workers' Compensation Commission Appeal No. 92330, decided August 31, 1992.

There is sufficient evidence to support the hearing officer's determination that the claimant did not suffer a compensable injury in the course and scope of her employment and that the supervisor's evaluation of the claimant's work was not anything more than a legitimate personnel action. Article 8308-4.02(b); See Texas Workers' Compensation Appeal No. 92076, decided April 3, 1992; Texas Workers' Compensation Commission Appeal No. 92555, decided December 2, 1992; Transportation Insurance Co. v. Maksyn, 580 S.W.2d 334 (Tex. 1979); Marsh v. Travelers Indemnity Co. of Rhode Island, 788 S.W.2d 720 (Tex. App.-El Paso 1990, writ denied). Accordingly, the decision is affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Susan M. Kelley
Appeals Judge