

APPEAL NO. 92647

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 21 and September 29, 1992, a contested case hearing was held in (city), Texas with (hearing officer) presiding. She determined that appellant, claimant herein, did not injure her right arm and shoulder on (date of injury) and did not give the employer timely notice of the incident. Claimant appealed, untimely, as stated hereafter, stating that she was injured, did not timely report, and sustained disability. Respondent, carrier herein, asserts that the appeal was untimely and that the hearing officer's findings are sufficiently supported by the evidence.

DECISION

Finding that the appeal in this case was not timely made, the decision of the hearing officer is the final administrative decision in this case. See Article 8308-6.34 (h) of the 1989 Act.

I

The decision of the hearing officer in this case was distributed on November 5, 1992 (it was dated November 4) by the Division of Hearings and Review to the parties. The Commission has addressed date of receipt of decisions through adoption of Rule 102.5(h), Tex. W. C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(h), which says, "the Commission shall deem the received date to be five days after the date mailed." The deemed date of receipt would be November 10, 1992. Article 8308-6.41(a) of the 1989 Act then provides that an appeal be filed with the Appeals Panel not later than the 15th day after the date of receipt of the decision. The 15th day in this case would have been November 25, 1992. However, Rule 145.3(c), Tex. W. C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(c), says that if the appeal is mailed on or before the 15th day, it may be received by the 20th day and still be timely. Therefore, if appellant mailed an appeal no later than November 25, 1992, it would be timely if received by November 30, 1992. In this case appellant dated and mailed her appeal on December 1, 1992, clearly too late to meet the terms of the statute. The appeal was received on December 3, 1992. As stated, the decision of the hearing officer is therefore final. See Article 8308-6.34(h) of the 1989 Act.

II

Even though this Appeals Panel has no basis for review without a timely appeal, the facts of the record will be briefly mentioned to indicate how an appeal would have been viewed had one been timely filed. Claimant worked in an office that concerned itself with child guidance. She filed a claim for mental trauma specifying a date in August 1991. That claim was reviewed in Texas Workers' Compensation Commission Appeal No. 92607, dated December 18, 1992 (after a timely appeal had been made). The record in this claim reveals a large amount of information, much of it repeatedly offered, about claimant's ability, conduct, treatment, and relationships on the job. It is extremely difficult to find reference to

any facts addressing an injury to the arm and shoulder on (date of injury) or any other time. The claimant does say she felt pain when moving a word processor, but does not say how she was moving it, how far, how it affected her at the time, whether she could work after that, whether anyone saw it, or how she reported it.

While not absolutely clear, it appears that (date of injury) was claimant's last day of work; no one indicates that she worked after that day. Claimant was hospitalized for depression on April 13, 1992, and no entry in those medical records indicates a problem or complaint about her arm or shoulder. Claimant first told a doctor of an arm and shoulder injury occurring on (date of injury), when she saw Dr. B on July 1, 1992. Medical records of Dr. M also reflect that claimant saw him on June 1, 1992, "for evaluation of her polyarthralgias. She has apparently had this problem since 1988, the onset was gradual and affected her arm and legs worse on the right side."

The hearing officer found that the employer was not notified of a possible arm/shoulder injury until July 21, 1992, the date this hearing was first begun. The only thing in the record to the contrary to that finding is claimant's notice of claim which is dated July 10, 1992, and claimant's answer to interrogatories propounded by the carrier which was delivered to carrier on July 13, 1992.

Had an appeal been timely made, the record indicates that the Appeals Panel would have found sufficient evidence for the hearing officer to have determined that there was no work injury on (date of injury) and no timely notice of injury to the employer.

The decision of the hearing officer is final since no timely appeal was made. Article 8308-6.43(h) of the 1989 Act.

Joe Sebesta
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Philip F. O'Neill
Appeals Judge