

APPEAL NO. 931050

This appeal is sought under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act) (formerly V.A.C.S., Article 8308-1.01 *et seq.*). On October 4, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. In her decision signed on October 8, 1993, the hearing officer decided that the claimant, PG, was an employee of the (employer) at the time of his compensable injury on (date of injury) and was not an employee of the (employer) was held liable for compensation.

In an appeal dated November 18, 1993, the appellant, (City), requested a review of the hearing officer's decision, arguing that claimant was employed by the (County). The County filed a response stating that the appeal had not been timely filed, as well as responding on the merits of the appeal as to why the hearing officer's decision was correct. The claimant did not file a response.

DECISION

Determining that the City did not timely file a request for review of the hearing officer's decision, we hold that the hearing officer's decision has become final pursuant to Section 410.169 of the 1989 Act.

Section 410.202 provides that "[t]o appeal the decision of the hearing officer, a party shall file a written request for appeal with the appeals panel not later than the 15th day after the date on which the decision of the hearing officer is received from the division and shall on the same date serve a copy of the request for appeal on the other party." See also, Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(b), 143.3(a), and 156.1(a) (Rules 102.5(b), 143.3(a), and 156.1(a)). Rule 102.5(b) provides that "[u]nless otherwise specified by rule, all notices and communications to insurance carriers will be sent to the carrier's (city) representative as provided [in Rule] 156.1" Rule 156.1(a) requires each insurance carrier to designate a person in (city), Travis County, Texas, to act as the carrier's representative for the purpose of receiving notices from the Commission. Rule 156.1(c) defines that notice to the carrier's designated representative's (city) address is notice to the carrier from the Commission. In Texas Workers' Compensation Commission (Commission) Advisory 92-07 dated November 3, 1992, the Commission advised all carriers that effective November 30, 1992, all documents and notices would be placed in the box of the carrier's (city) representative, and that "[n]o additional copies of such documents will be mailed to Carrier's Representatives who have attended such proceedings."¹

To evaluate compliance with these directives, we note that although the hearings decision describes the City as "self-insured," the record indicates that insurance was provided through an insurance company, Employer's Casualty Company/Old Republic

¹Effective December 15, 1993, according to TWCC Advisory 93-11, courtesy copies of hearings decisions will be sent to attorneys for carriers; however, that advisory does not change the position that official notice for all purposes is that given to the (city) representative.

Insurance Company. The employers' notification of coverage by the Parks Bureau indicated this, as well as the benefit review conference (BRC) report which was served on the (city) representative for this carrier, Crawford & Company. After the BRC (at which it appears the City was represented by the City attorney), the City hired outside counsel, who sought a continuance in this case as representative of "Old Republic Insurance Company/City."

Commission records reflect that the hearing officer's decision was provided to both alleged employers (employer), both (city) representatives, and the claimant. This complies with the Commission procedures set forth in Advisory 92-07 and rules cited above.

The City does not dispute the distribution date to the carrier's Commission box. The City's attorney argues that if Crawford & Company was its (city) representative, that he did not know about it. However, distribution of the BRC report was made to this entity and is reflected on that report's cover letter.

The City's attorney does not indicate how he was informed of the hearing officer's decision. He stated that he filed the appeal on the day he learned a decision had been issued, but this is not the operative date. See Texas Workers' Compensation Commission Appeal No. 93804, decided October 22, 1993. While it is regrettable if neither the employer nor the (city) representative communicated to their attorney in a timely fashion, such matters are between the parties and their attorneys, and do not constitute any grounds for setting aside statutory time limits.

In the instant case, the City did not state in its appeal the date on which the carrier's Commission representative actually received the hearing officer's decision. In accordance with our previous decisions applying Rule 102.5(h), where the date of receipt is not accurately and specifically set forth in the appeal, we apply the deemed receipt rule to the City's appeal in determining whether the appeal was timely. See Texas Workers' Compensation Commission Appeal No. 93519, decided July 28, 1993. Since the Commission distributed the decision on October 22, 1993, the deemed date of receipt under Rule 102.5(h) and Rule 102.3(a)(1 and 3) is October 27, 1993. Consequently, the filing deadline for the appeal was 15 days after October 27, 1993, which date was November 11, 1993. Because this was a legal holiday, the date is extended under TEX. GOV'T CODE § 311.014, and that the appeal was due November 12, 1993. The city's appeal is dated November 18, 1993, and was mailed on that date by overnight mail to the Commission. It was stamped received by the Commission on November 19, 1993. The City's appeal of the hearing officer's decision was therefore not timely filed. Therefore, the hearing officer's decision became final under the provisions of Section 410.169. See also Rule 142.16(f).

Because the City did not timely request an appeal, the decision of the hearing officer is final pursuant to Section 410.169.

Susan M. Kelley
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Lynda H. Nesenholtz
Appeals Judge