

APPEAL NO. 93146

This appeal arises under the Texas Workers' Compensation Act. TEX. REV. CIV. STAT. ANN. art. 8308-1.01 *et seq.* (Vernon Supp. 1993 (1989 Act)). On January 21, 1993, a contested case hearing (CCH) was held in (city), Texas, with (hearing officer) presiding as hearing officer.

The hearing officer determined that the respondent (claimant) sustained an injury to his left foot in the course and scope of his employment on (date of injury), and that he had disability beginning on June 21, 1992. Appellant, carrier, files an appeal dated February 24, 1993, alleging insufficiency of the evidence and requests that we render a decision in its favor. Claimant responds alleging carrier's request for review is untimely.

DECISION

Finding the appeal in this matter was not filed within the time limits required by Article 8308-6.41(a), the decision of the hearing officer is the final administrative decision in this case. See Article 8308-6.34(h) of the 1989 Act.

The decision of the hearing officer was distributed, by mail, on January 28, 1993. Carrier in its appeal states "[t]he carrier received the Hearings (sic) Officer's decision on February 9, 1993 . . ." Claimant's attorney however, provides documentation which clearly shows that "Houston General Claims" (which we presume, in the absence of other information to be the claims section of Houston General Insurance Company, the carrier) received the hearing officer's decision on February 1, 1993, in Austin, Texas, and February 2, 1993 in Fort Worth, Texas. Claimant's attorney, by letter dated February 25, 1993, to the carrier's attorney, recites he received the date stamped copy of the decision from "Houston General" and that "[a]nyway you slice it, the fifteen (15) days were up on February 17, 1993 and the twenty (20) days were up on February 20, 1993." The postmark on carrier's appeal is illegible, however the letter is dated February 24, 1993, and was received February 25, 1993.

Article 8308-6.41(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.3(a)(3) (Rule 142.3(a)(3)) require that an appeal be filed not later than the 15th date after receipt of the hearing officer's decision. Rule 143.3(c) presumes an appeal to be timely filed if it is "mailed on or before the 15th day after the date of receipt of the hearing officer's decision . . . and (2) received by the commission . . . not later than the 20th day after the date of receipt of the hearing officer's decision."

Perhaps carrier's attorney means he received the hearing officer's decision on February 9, 1993, however the evidence is clear that the carrier, as a party to the action, received the hearing officer's decision in Austin, Texas, on February 1, 1993. Pursuant to Rule 143.3(c) to be timely filed, the appeal should have been mailed February 16th and received February 22nd (February 21st being a Sunday and pursuant to Rule 102.3(a)(3) the period is extended to the next day that is not a Saturday, Sunday, or legal holiday).

Since the appeal was not mailed until either February 24th or February 25th, it was not filed within the statutory time limit.

Article 8308-6.34(h) states the decision of the hearing officer is final in the absence of a timely appeal. Determining the appeal was not timely filed, as set forth above, we have no jurisdiction to review the hearing officer's decision.

The hearing officer's decision is final.

Thomas A. Knapp
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Philip F. O'Neill
Appeals Judge