APPEAL NO. 93211

On January 25, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. The hearing was held under the provisions of the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8303-1.01 *et seq.* (Vernon Supp. 1993) (1989 Act). The issues at the contested case hearing were: 1. whether the respondent (claimant herein) was injured in the course and scope of his employment; 2. whether or not claimant or someone acting for claimant notified the employer of his injury not later than the 30th day after the date on which such injury occurred or, failing to do so, did good cause exist for such failure to timely report the injury; 3. whether or not a subsequent injury is the sole cause of claimant's current medical condition; and 4. whether or not the claimant's arm injury is related to his accident at work.

The hearing officer held that claimant was injured in the course and scope of his employment and timely reported his injury. The hearing officer also found that claimant's arm injury was related to his accident at work and that claimant's subsequent injury was not the sole cause of the present condition of the claimant's right arm.

Respondent, a political subdivision which is statutorily self-insured, (herein carrier) argues that its appeal is timely filed and that the hearing officer's findings that claimant was injured in the course and scope of employment and that his injury was reported timely are so contrary to the great weight and preponderance of the evidence as to be manifestly unjust. The carrier also argued that the hearing officer erred in admitting certain evidence and in excluding other evidence.

The claimant files no response to the appeal of the carrier.

DECISION

Because the carrier's request for review was not timely, we hold the decision and order of the hearing officer has become final by operation of law.

The attorney for carrier states that she has represented carriers and employers before the Texas Workers' Compensation Commission (Commission) since July, 1991. The attorney further says that she provided a notice of representation to the Commission's (city) field office on December 28, 1992, requesting that all notices and communications in this case be directed to her. She also alleges that it is the "longstanding practice" of the Commission to forward copies of the decision from the contested case hearing to attorneys and on all previous occasions the decision was forwarded to her, although on several different occasions the decision has "taken longer than the 14 (sic) day limit to be completed and mailed." Therefore, the attorney states that she had no reason to know when the opinion was not received timely that it had not been mailed to her, particularly since neither she nor the carrier had received any notice from the Commission that it had changed its policy of forwarding the opinion to attorneys. She declares that she "has since been informed that the Commission no longer provides copies of the opinions to attorneys," but

in the present case she did not receive a copy of the decision of the contested case hearing until March 8, 1993, when it was transmitted to her by facsimile from the field office of the Commission. Attorney for the carrier requests that this appeal be deemed timely because she was not given timely notice of the decision of the contested case hearing, citing Texas Workers' Compensation Appeal No. 92199, decided June 26, 1992, as authority, and also asserts that if carrier's right to appeal is denied in this case, carrier will be denied due process of law.

Although claimant did not file any response to carrier's request for review, we have previously found a request untimely without the issue being raised in a response to a request for review. *See* Texas Workers' Compensation Commission Appeal No. 92080, decided April 14, 1992. In the present case, we find that the self-insured employer's request for review was not filed within the time limit imposed for an appeal to the Appeals Panel under the 1989 Act and the rules of Texas Workers' Compensation Commission. Tex W.C. Comm'n 28 TEX. ADMIN. CODE § 142.16 (Rule 142.16) provides, in relevant part, as follows:

(c)No later than the tenth day after the close of the hearing, the hearing officer shall file all decisions with the division of hearings.

(d)No later than seven days after filing the decision, the division shall furnish to the parties, by first class mail or personal delivery:

(1)a file-stamped copy of the decision; and
(2)a statement specifying the place, manner, and time period within which an appeal must be filed.

In regard to communications from the Commission, Rule 102.5(h) provides, in relevant part, that: "the commission shall deem the received date to be five days after the date mailed."

Article 8308-6.41(a) (1989 Act) provides, in relevant part, as follows:

A party that desires to appeal the decision of the hearing officer shall file a written 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 of hearings and shall on the same day serve a copy of the request for review on the other party . . . .

Rule 143(a)(3) provides that a request for review of the hearing officer's decision shall be filed with the Commission's central office in Austin "not later than the 15th day after receipt of the hearing officer's decision . . . ." Rule 143.3(c) goes on to provide the following:

(c)A request made under this section shall be presumed to be timely filed or timely served if it is:

(1)mailed on or before the 15th day after the date of receipt of the hearing officer's decision, as provided in subsection (a) of this section; and
(2)received by the commission or other party not later than the 20th day after the date of receipt of the hearing officer's decision.

Finally, Article 8308-6.34(h) provides in relevant part that: "The decision of the hearing officer regarding benefits is final in the absence of a timely appeal by a party. . . . "

In the present case, the hearing officer signed his decision on February 2, 1993. By letter dated February 8, 1993, distributed February 9th, the Commission forwarded to the parties a copy of the decision and a fact sheet explaining what to do if a party wanted to appeal the decision. The letter also stated the office and the address to which an appeal should be directed. This letter was sent both directly to the carrier and to the carrier in care of Gay & Taylor in Austin.

On March 19, 1993, a Friday, the carrier's request for review, signed by carrier's attorney, was transmitted by Federal Express directed for weekday delivery to the Commission at the address given in the Commission's letter of February 8, 1993. The request was received by the Commission's central office on Monday, March 22, 1993.

Since this file shows that the Commission's transmittal letter with the hearing officer's decision attached was mailed on February 9, 1993, carrier under Rule 102.5(h) is deemed to have received it on February 14, 1993. Thus carrier was required to file its appeal not later than 15 days from February 14, 1993, or by March 1, 1993. However, since carrier did not send its request for review until March 19, 1993, its appeal is not timely. Consequently, the jurisdiction of the Appeals Panel has not been properly invoked. *See* Texas Workers' Compensation Commission Appeal No. 92080, decided April 14, 1992, and decisions cited therein. Pursuant to Article 8308-6.34(h) and Rule 142.16(f), the decision of the hearing officer is final.

The present case is readily distinguishable from our decision in Texas Workers' Compensation Appeal No. 92199, decided June 26, 1992. In that case the claimant at the hearing indicated to the hearing officer that a particular address was incorrect, and also indicated his correct address, yet the decision of the contested hearing officer was mailed to the incorrect address. We held interpreting Rule 102.5(a) that this rule obliges the Commission to send the decision of the hearing officer to the "last address supplied by the claimant." Rule 102.5 has different specific provisions concerning providing notice to claimants, to carriers and to employers. Since the present case does not involve notice to

a claimant, Rule 102.5(a) is simply not controlling in the present case. Nor do we find in Rule 102.5, or anywhere else in the rules of the Commission, a requirement of notice to attorneys for carriers or for employers.

Finally, as to the contention that our refusal to accept this appeal would violate due process, we do not understand how carrier's due process is denied by our recognition of its failure to properly invoke our jurisdiction. In any case, we have previously held that the Appeals Panel, an administrative body, does not decide questions of constitutionality. *See* Texas Workers' Compensation Commission Appeal No. 92275, decided August 11, 1992.

Although not necessary to our decision, we have reviewed the entire record and find carrier's allegations of error without merit.

For the foregoing reasons, the decision of the hearing officer is final.

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Gary L. Kilgore
Appeals Judge

CONCUR:

_____
Stark O. Sanders, Jr.
Chief Appeals Judge

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Joe Sebesta
Appeals Judge