

APPEAL NO. 93273

On March 19, 1993, a decision was rendered in the above styled case (Texas Workers' Compensation Appeal No. 93108) which indicated, among other things, that respondent's (carrier herein) cross points of error, as being an appeal from the hearing officer's decision, were not timely filed. On April 7, 1993, carrier's counsel filed a motion for reconsideration with affidavits from carrier's counsel and carrier's adjustor asserting the hearing officer's decision in Appeal No. 93108 "was not received by [carrier] until February 3, 1993." Carrier's Request for Review and Response to Appellant's (claimant herein) Request for Review were mailed February 15, 1993, and received February 18, 1993.

DECISION

The Motion for Reconsideration is denied.

As noted above, carrier submits an affidavit of Mrs. B, who is identified as "the adjustor for CNA" working on this case. Her affidavit states "[o]n February 3, 1993, I received the decision from the hearing officer as to the merits" in the instant case. The affidavit goes on to state that on February 3rd, she called carrier's counsel, advised him of the decision and at 9:30 a.m. telefaxed him a copy. We would point out the key issue is not when a particular adjustor (or counsel for that matter) received the hearing officer's decision, but rather when the carrier, as the party of interest, received the decision. See Tex. W.C. Comm'n 28 TEX. ADMIN. CODE §§ 102.5 (B) and 156.1 (Rules 102.5(b) and 156.1). *Particularly see* Rule 156.1 (c) which states "[a]ny notice from the commission, sent to the designated representative's Austin address is notice from the commission to the insurance carrier." We note the hearing officer's decision was sent to Frank E. Land, Box 8, Transportation Insurance Company, 3724 Executive Center Drive, Suite 150, Austin, TX 78731 on January 20, 1993. Consequently, when Ms. B may have actually received a copy of the decision is not controlling. An appeal to be timely would had to have been mailed no later than February 10th, five days before the cross-appeal and response were actually mailed.

Although the above is dispositive of the matter we would note that carrier's counsel in his affidavit states "after receiving the telefax (of the hearing officer's decision on February 3, 1993), I spent the next several days preparing the Request for Review and Response to Appellant's Request for Review." This would indicate that on or about February 3rd, carrier's counsel was already in receipt of claimant's appeal and should have been on notice that the cross-points of appeal might be due well before the 15 days allowed for a response to claimant's appeal.

Motion denied.

Thomas A. Knapp
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Joe Sebesta
Appeals Judge