

## APPEAL NO. 93568

This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act), TEX. REV. CIV. STAT. ANN. Articles 1.01 through 11.10 (Vernon Supp. 1993). On April 15, 1993, (claimant) notified the Texas Workers' Compensation Commission (Commission) in writing that he was contesting a hearing officer's decision of November 9, 1992, on attorney's fees. On April 16, 1993, a hearing officer, issued an "Order for a Contested Case Hearing" to be held to contest the attorney's fees. On June 7, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. In her order of June 17, 1993, she determined that the claimant, did not timely contest attorney's fees. The hearing officer ordered that the (carrier) pay attorney's fees in the amount of \$2,205.00, as required in the Commission order of November 9, 1992. The claimant appealed the June 17, 1993, decision (distributed by the Commission on June 24, 1993) in a letter dated July 8, 1993, and stamped received by the Commission on July 9, 1993. The attorney filed no response with the Appeals Panel.

### DECISION

Finding that the claimant did not timely file a request for review with the Appeals Panel to appeal the original hearing officer's decision of November 9, 1992, we find that the original hearing officer's decision has become final pursuant to the provisions of Article 8308-6.34(h). Further, if the appeal had been timely filed, sufficient evidence exists in the record to support the second hearing officer's decision of June 17, 1993, that the first hearing officer did not abuse her discretion in an award of attorney's fees and that the attorney's fee awarded was reasonable.

A hearing officer issued the order on attorney's fees on November 9, 1992. The Commission sent out the order with a cover letter dated November 13, 1992. This order on attorney's fees was sent to the claimant with the cover letter which specifically explained the applicable procedure to the claimant: "Should you wish to contest the fee ordered, **you must send a written request for review** by the Appeals Panel **no later than the 15th day after you receive this order.**" Without assistance of counsel, the claimant filed a challenge to the attorney fees with the Commission in a letter dated April 15, 1993. The challenge was received by the Commission on April 15, 1993. Article 8308-6.41(a) requires that "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 date serve a copy of the request for review on the other party." See *also* Tex. Workers' Comp. Comm'n, 28 TEX. ADMIN. CODE § 143.3(a)(3) (Rule 143.3(a)(3)).

The Commission should have forwarded the challenge as a request for review to the Appeals Panel. Instead, a hearing officer issued an order on April 16, 1993, calling for another contested case hearing to contest the attorney's fees. The hearing officer lacked jurisdiction to issue an order setting a contested case hearing on attorney's fees when a hearing officer had already ruled on attorney's fees. To challenge an award of attorney's

fees, an attorney, claimant, or carrier must contest the decision on fees fixed and approved by the Commission by requesting a benefit contested case hearing only if a contested case hearing has not yet been held. Rule 152.3(f). Rule 152.3(f) specifically states that subsection (g) is an exception to subsection (f). Subsection (g) requires that:

An attorney, claimant, or carrier who contests the fee ordered by a hearing officer after a benefit contested case hearing shall request review by the appeals panel pursuant to the provisions of §143.3 of this title (relating to Requesting the Appeals Panel to Review the Decision of the Hearing Officer). Rule 152.3(g) (emphasis added).

This is a mandatory rule requiring a review of attorney's fees ordered at a contested case hearing to be reviewed by the appeals panel.

The order by the hearing officer requiring a second contested case hearing on the attorney's fees was harmless error because the appeal was untimely. Where it appears no injury results to the complaining party, an appellate court has always declined to disturb a ruling or a judgment of a trial court. Texas Power & Light v. Hering, 148 Tex. 350, 224 S.W.2d 191, 192 (1949); *citing* Golden v. Odiorne, 112 Tex. 544, 249 S.W.2d 822, 823 (1923). Had the original challenge to the attorney's fees (a request for review) been received within the 15 day statutory limit, the appeal would still have been considered timely, even if mishandled within the Commission, and if the Appeals Panel received the appeal beyond the time limit. Texas Workers' Compensation Commission Appeal No. 93702, decided March 12, 1993; Texas Workers' Compensation Commission Appeal No. 92045, decided February 25, 1992.

Computation of time periods under the 1989 Act must be made in accordance with Section 311.014 of the Texas Government Code. TEX. GOV'T CODE ANN. § 311.014 (Vernon 1988). Having legislative authority to implement and to enforce the workers' compensation laws, the Commission established detailed rules on the computation of time for the timely filing of documents. Article 8308-2.09(a). The Commission rules comply with the requirements of Section 311.014 of the Texas Government Code. "For purposes of determining the date of receipt of these notices and other written communications which require action by a specific date after receipt, the commission shall deem the received date to be five days after the date mailed." Rule 102.5(h). The Commission rules deem that the claimant received the hearing officer's decision on November 18, 1992, which is five days after the cover letter date of November 13, 1992, of the decision issued on November 9, 1992. The claimant even stated on the record that he received the decision on November 16, 1992, which date of actual receipt would shorten his time to appeal. The claimant's 15 day date would have ended on Tuesday, December 1, 1992. Rule 102.3. We conclude that the claimant failed to file a timely request for review in accordance with Article 8308-6.41(a), Rule 143.3, and Rule 152.3(g). In the absence of a timely request for review by the appeals panel, the decision of the hearing officer became final by operation of

law. Article 8308-6.34(h); Rule 142.16(f); Texas Workers' Compensation Commission Appeal No. 92265, decided August 5, 1992.

The claimant's request for review was dated April 15, 1993, and was file stamped by the Commission on April 15, 1993, which date is over four months beyond the statutory limit of 15 days. Claimant's request for review was clearly not filed timely and failed to invoke our jurisdiction. Therefore, the hearing officer's decision became final by operation of law. Article 8308-6.34(h); Texas Workers' Compensation Appeal No. 92219, decided July 15, 1993.

At the June 1993 hearing, the attorney presented evidence in support of the time he spent on the claimant's workers' compensation claim. The testimony of the claimant contradicted some of the records of the time the attorney actually spent on the workers' compensation claim. In her decision of June 17, 1993, the hearing officer found that the attorney's fees, approved by the Commission in the original hearing decision of November 9, 1992, were reasonable.

Even if the claimant had timely appealed, the record indicates that the Appeals Panel would have found that sufficient evidence supported the hearing officer's decision on attorney's fees. The hearing officer's decision was not against the great weight and the preponderance of the evidence. Pool v. Ford Motor Co., 715 S.W.2d 629, 636 (Tex. 1986). Finding no reversible error and finding sufficient evidence to support the challenged findings, we affirm the hearing officer's decision and order of June 17, 1993. We find harmless error in the order of April 16, 1993, in which a hearing officer allowed a second contested case hearing on the attorney's fee in this case.

Because the appeal was not timely filed, the decision of the hearing officer on November 9, 1992, is final. Article 8308-6.34(h).

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Joe Sebesta  
Appeals Judge

CONCUR:

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Robert W. Potts  
Appeals Judge

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Philip F. O'Neill  
Appeals Judge