

APPEAL NO. 93686

On June 10, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding as the hearing officer. The hearing was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). The issue at the hearing concerned the amount of attorney's fees that had been approved by the Texas Workers' Compensation Commission (Commission) for the appellant's (attorney's) representation of the respondent (claimant). The hearing officer determined that attorney fees of \$625.00 approved by the Commission on September 29, 1992, were reasonable and necessary, but that only \$62.50 of the total amount of attorney fees approved by the Commission on November 9, 1992, were reasonable and necessary. The attorney disputes the hearing officer's decision.

DECISION

Determining that the attorney did not timely file a request for review of the hearing officer's decision, 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 §§ 143.3(a) and 152.3(g) (Rules 143.3(a) and 152.3(g)). The hearing officer's decision was mailed to the parties on July 9, 1993. Rule 102.5(h) provides that for purposes of determining the date of receipt for those notices and other written communications which require action by a date specific after receipt, the Commission shall deem the received date to be five days after the date mailed.

Notwithstanding the provisions of Rule 102.5(h), in previous decisions we have counted the 15 day appeal deadline from the date a party recites in its appeal it received the hearing officer's decision. See Texas Workers' Compensation Commission Appeal No. 91124, decided February 12, 1992; Texas Workers' Compensation Commission Appeal No. 92016, decided February 28, 1992; and Texas Workers' Compensation Commission Appeal No. 92099, decided May 21, 1992. However, when an appellant has not stated in its appeal the date the appellant received the decision of the hearing officer, we have applied the deemed received date provision in Rule 102.5(h) in determining whether the appeal was timely filed. See Texas Workers' Compensation Commission Appeal No. 92036, decided March 11, 1992; Texas Workers' Compensation Commission Appeal No. 92080, decided April 14, 1992; Texas Workers' Compensation Commission Appeal No. 92223, decided July 13, 1992; and Texas Workers' Compensation Commission Appeal No. 93185, decided April 26, 1993. We have also applied the deemed receipt date provision of Rule 102.5(h) where the appellant merely avers in its appeal that the appellant is requesting review of the hearing officer's decision within 15 days of receipt of the decision but fails to state the date the hearing officer's decision was received. See Texas Workers' Compensation Commission

Appeal No. 92265, decided August 5, 1992.

In the instant case, the attorney does not state in his appeal the date he received the hearing officer's decision but does state that he "just recently" received the hearing officer's decision "inasmuch as during the month of July, beginning with July 10th, I was out of state attending a week long seminar . . . and also took some vacation time during the latter part of the month." The attorney adds that "[h]owever, I am responding to this within fifteen (15) days of my receipt of this." In accordance with our previous decisions applying Rule 102.5(h) where the date of receipt is not set forth in the appeal, we apply that rule to the attorney's appeal in determining whether the appeal was timely. We observe that the attorney appears to be saying that he "received" the decision when he returned from vacation, but he does not indicate when the decision was actually received in his office. Since the decision was mailed on July 9, 1993, the deemed date of receipt under Rule 102.5(h) is Wednesday, July 14, 1993. Consequently, the filing deadline for the appeal was 15 days after July 14, 1993, which date was Thursday, July 29, 1993. The attorney's appeal is dated August 5, 1993, and was received by the Commission on August 9, 1993. We conclude that the attorney's appeal of the hearing officer's decision was not timely filed. Thus, the hearing officer's decision became final under the provisions of Sec. 410.169. See *also* Rule 142.16(f).

The decision of the hearing officer is final pursuant to Sec. 410.169.

Robert W. Potts
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Lynda H. Nesenholtz
Appeals Judge