

APPEAL NO. 93846

On August 6, 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) (formerly V.A.C.S., Article 8308-1.01 *et seq.*). The issues at the hearing were: (1) whether (employer) was the respondent's (claimant's) employer at the time of his injury in the course and scope of his employment on (date of injury), for purposes of the Texas Workers' Compensation Act, and (2) whether the claimant has any disability as a result of that injury. The hearing officer concluded that the claimant was the borrowed servant of (employer) when he suffered his injury and that he had disability from November 26, 1992, until January 27, 1993, as a result of this injury. The hearing officer ordered the carrier to pay income and medical benefits in accordance with her decision. The appellant (carrier) appeals only the findings of fact and conclusions of law of the hearing officer which determined that the claimant was an employee of (employer) at the time of his injury. The carrier contends that its agreement with (company), which clearly sets forth the relationship between the two companies and defines the right to control employees, governs this issue and is binding on the hearing officer absent evidence that the purpose and intent of the agreement was to avoid liability as an employer. See Section 406.124. The claimant has not responded to this appeal.

DECISION

Determining that the request for review was not timely filed and that the jurisdiction of the Appeals Panel has not been properly invoked, the decision of the hearing officer has become final pursuant to the provisions of Section 410.169.

Records of the Texas Workers' Compensation Commission (Commission) show that the hearing officer's decision was distributed to the claimant, the employer and the carrier's Austin representative on August 23, 1993, with a cover letter dated August 20, 1993.

In its request for review dated September 22, 1993, the carrier states:

A copy of the decision (of the hearing officer) was first received by Carrier on September 20, 1993, with this Appeal being filed as soon as practical and within fifteen (15) days of receipt of the decision.

Section 410.202(a) provides that "[t]o appeal the decision of a 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)(3) (Rule 143.3(a)(3)). Notices and communications, including decisions of hearing officers, are sent to a carrier's Austin, Texas, representative. See Rule 102.5(b) and Rule 156.1. See *also* Texas Workers' Compensation Commission Advisory 92-07, dated November 3, 1992, wherein carriers and

their representatives were advised that effective November 30, 1992, all documents and notices, including hearing officer decisions, would be placed in the carrier's Austin representative's box in the Commission's Central Office and that no additional copies would be mailed. See Texas Workers' Compensation Commission Appeal No. 93353, decided June 21, 1993; Texas Workers' Compensation Commission Appeal No. 93519, decided July 28, 1993; and Texas Workers' Compensation Commission Appeal No. 93804, decided October 22, 1993. In this case, there is nothing to indicate that the regular, routine procedure of placing a copy in the representative's box was not followed. The carrier does not allege any circumstances to the contrary.

Rule 102.5(h) provides that the Commission shall deem the received date of written communications to be five days from the date mailed (here, placed in the carrier's Austin representative's box). The decision having been distributed or placed in the carrier's Austin representative's box on August 23, 1993, and applying the five day deemed rule plus the 15 days for filing an appeal, the last day of the period for filing the appeal was September 12, 1993, a Sunday. Pursuant to Rule 102.3(a)(3), the period for filing this appeal was extended to the next day, Monday, September 13, 1993. Since the appeal is dated September 22, 1993, and was dispatched by a private courier service on September 23, 1993 (the same date service was made on the claimant), it is determined to be untimely and the jurisdiction of the Appeals Panel has not been properly invoked.

The carrier's assertion that it first received the decision of the hearing officer on September 20, 1993, does not provide a basis for concluding that the time for filing an appeal extended for 15 days beyond that date. This is because the Commission distributed the hearing officer's decision to the carrier by placing the decision in the Carrier's Austin representative's box on August 23, 1993, in accordance with the rules of the Commission. Thus, any delay in the carrier's receipt of the decision subsequent to distribution of the decision to the carrier's Austin representative is attributed to the representative or to the carrier and, accordingly, does not affect the date of receipt by the carrier's representative. See Appeal No. 93519, *supra*. As provided in Section 406.011(a) and Rule 156.1(c), notice to the carrier's designated Austin representative is notice from the Commission to the carrier.

Accordingly, pursuant to Section 410.169 the decision of the hearing officer has become final.

Philip F. O'Neill
Appeals Judge

CONCUR:

Lynda H. Nesenholtz
Appeals Judge

Thomas A. Knapp
Appeals Judge