

APPEALS PANEL NO. 94017
FILED FEBRUARY 16, 1994

Pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), hearing officer _____ presided over a contested case hearing (CCH) held in (City), Texas, on June 8 and July 21, 1993, with the record being closed on October 5, 1993. He determined that the appellant (claimant) was an employee of the respondent (employer/carrier), a self-insured governmental subdivision, on (date of injury), that he was not injured in the course and scope of his employment on (date of injury), that he had good cause for failing to timely notify his employer of his alleged injury, that he has not suffered disability as a result of the alleged injury, and that he did not suffer an injury in the form of an occupational disease on (date of injury). Claimant appeals all of the issues considered at the CCH including those decided in his favor, that is, the issue of his employment status and good cause. He also generally complains of error on the part of the hearing officer in considering issues that "were contrary to the act," and "law," and by creating new issues and asserts a miscarriage of justice by several actions of the employer. A timely response was not filed.

DECISION

Determining the request for review has not been timely filed, jurisdiction of the Appeals Panel has not been the properly invoked and, accordingly, the decision of the hearing officer has become final.

The decision of the hearing officer was mailed to the parties on November 24, 1993. The address to which the claimant's copy of the decision was mailed was the last known address furnished to the Texas Workers' Compensation Commission (Commission) by the claimant (the Commission records currently reflect that same address) and the one that the claimant was apparently residing at the time of the CCH. The claimant's request for review is postmarked January 3, 1994, and was received by the Commission on January 5, 1994. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(a) (Rule 102.5(a)) provides that:

All notices and written communications to the claimant or claimant's representative will be mailed to the last address supplied by that claimant or representative.

For purposes of determining the date of receipt of notices and 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." Rule 102.5(h).

Section 410.202(a) provides that a party appealing a hearing officer's decision shall file a written request for review not later than the 15th day after the date on which the decision of the hearing officer is received from the division of hearings. The issue here is whether the Commission Rules deem the claimant to have received the decision of the hearing officer five days after it was mailed and thereby starting the 15 days appeal clock. The 15 day clock would have started running on November 29, 1993. We have noted case

authority and have so held that where, through no fault of the party mailing a notice, the postal service errs and does not effect delivery because of its mistake or misfeasance, a notice is considered timely filed. Ward v. Charter Oak Fire Insurance Company, 579 S.W.2d 909 (Tex. 1979); See Texas Worker's Compensation Commission Appeal No. 931172, decided January 18, 1994; Texas Workers' Compensation Commission Appeal No. 92307, decided August 24, 1992. In this case, there is no evidence to show that the claimant ever notified the Commission of any change of address or that the Commission in any way improperly addressed or did not timely mail the claimant a copy of the hearing officer's decision. See generally Texas Employers Insurance Association v. Wernske, 349 S.W.2d 90 (Tex. 1961). The claimant asserts in his request for review that the letter arrived at the correct post office but was somehow sent to a wrong address, returned to the post office after some delay and then forwarded to him at a new address in (state) pursuant, apparently, to a change of address notice filed with the post office at some unknown time. Based on this, the claimant requests that a "waiver of time" be granted "for good cause." Again, the Commission records show it properly mailed a copy of the decision to the correct address shown in the records. This was in compliance with the Rules, and the decision was deemed received on the fifth day after mailing. There is no showing that the post office erred, made a mistake or was otherwise a party to malfeasance. However, it is clear that the claimant failed to provide the Commission with his current address and therefore a copy of the decision could not be sent directly to the claimant. Texas Workers' Compensation Commission Appeal No. 92339, decided September 4, 1992. Also see the concurring opinion in Appeal No. 92307, *supra*. As we stated and without probative evidence to consider, in Appeal No. 931172, *supra*, "it does not appear that the fault for the claimant's untimely appeal can be laid at the doorstep of the United States Postal Service." The claimant has not established that his request for review was timely filed, and, under the circumstances, the decision of the hearing officer is final. Section 410.169.

Although the hearing officer's decision is final, we note that had a timely request for review been filed, we would have nonetheless affirmed his decision. Very briefly, the record in the case showed that the claimant, unfortunately, had long term documented psychiatric problems with which he apparently coped over the years in his position as school teacher, although he was more recently (indicated in a letter from his doctor dated January 31, 1992) being treated for "paranoid schizophrenia." At sometime in 1990, he was apparently reported for an incident of child molesting although there is no indication of any final decision on that matter. However, he was placed on administrative leave without pay by the employer/carrier and apparently suffered further psychiatric problems and mental trauma and was hospitalized for a time. This episode resulted in a Workers' Compensation claim under the law in effect prior to the 1989 Act. The 1989 Act only includes injuries occurring on or after January 1, 1991. In any event, since the claim was disputed, he was scheduled by the Commission for a "pre-hearing" under the prior law for (date of injury). Because of some otherwise undefined threats emanating from the claimant, the Commission undertook to have police security at the "pre-hearing." The claimant testified that the presence of police upset him, that he announced early at the hearing that he was ill and that he was leaving. The current claim is based upon his prior

mental trauma being aggravated by the increased security at the "pre-hearing" and that it was an injury in the course and scope of his employment. The hearing officer found that the claimant was an employee of employer/carrier on (date of injury), as he was on administrative leave, but that he was not in the furtherance of his employer's business at the time of the (date of injury), "pre-hearing" which was reset, at claimant's request from an earlier February 4, 1991, conference. Rather, the hearing officer found that the claimant was pursuing his individual claim. He also found that the only evidence presented of an occupational disease was of a repetitive mental trauma due to the stress of teaching school. And, the hearing officer did not find a timely notice of injury of the alleged (date of injury), injury since there was no indication that the claimant's injury or illness was related to the employment reflected in either the claimant's statement on (date of injury), or in a later letter from his doctor. However, the hearing officer found good cause because of the claimant's mental condition during and subsequent to the 30 day time frame for notice of injury. He also found there was no disability as a result of the alleged injury on (date of injury), which was not a compensable injury.

Clearly, there was sufficient evidence to support the hearing officer's findings and conclusions. While there was no doubt that the claimant suffers from long standing psychiatric problems, the evidence failed to establish that he sustained any specific mental trauma injury on (date of injury), or that any injury on that date was in the course and scope of his employment. We have repeatedly held that repetitive mental trauma injuries are not compensable (Texas Workers' Compensation Commission Appeal No. 931108, decided January 21, 1994) and that for a mental trauma injury to be compensable, it must be traceable to a definite time, place and cause. Texas Workers' Compensation Commission Appeal No. 93596, decided August 26, 1993. That was not the situation in this case as found by the hearing officer. Had our jurisdiction been properly invoked, we would have concluded there is sufficient evidence to support his determination and, conversely, that his findings and conclusions were not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. In re King's Estate, 244 S.W.2d 660 (Tex. 1951); Texas Workers' Compensation Commission Appeal No. 92232, decided July 20, 1992.

Because we determine that the request for review has not been timely filed and that our jurisdiction has not been properly invoked, the decision and order of the hearing officer have become final.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Thomas A. Knapp
Appeals Judge