

## APPEAL NO. 94276

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), and Tex. W.C. Comm'n Rules, 28 TEX. ADMIN. CODE §§ 143.3 and 152.3 (Rules 143.3 and 152.3). On April 21, 1993, a contested case hearing on attorney's fees was held in (city), Texas, with (hearing officer) presiding. The hearing was requested by MB, the attorney for the claimant, DM, who was appealing the reduction of her requested fees from \$1455.00 to \$750.00. The claim for fees only covered services rendered from September through November 1992, for assistance and representation through a benefit review conference.

The hearing officer determined that the attorney for the claimant was not entitled to \$1,455.00 in attorney's fees because the fees were not justified for the work the attorney performed. The hearing officer upheld the attorney's fees order entered on November 10, 1992.

The attorney for the claimant has filed an appeal challenging the hearing officer's decision. A basis for the challenge argues that the hearing officer, described as "she" in the appeal, was biased against claimant and his attorney. The appeal also argues tremendous effort preparing for the contested case hearing. The appeal further argues that the entire request of the carrier's attorney was approved, and questions whether there is a different review standard for carrier's attorneys. The appeal incorporates an "enclosed" May 25, 1993, letter, but such letter is not attached to the appeal. No response was received from carrier or claimant.

## DECISION

Finding that the attorney for the claimant did not timely file an appeal of the hearing officer's decision, we find that the hearing officer's decision and order have become final pursuant to Section 410.169.

It is important to sort out first what is before this tribunal, and what is not, especially in light of contentions made regarding preparation for the contested case hearing held on claimant's claim. That hearing was held in May 1993, with (hearing officer) presiding. It may be that claimant's attorney is entitled to fees for those services. However, the decision on attorney's fees that is appealed here, and attached to the request for review, concerns only services rendered up to and including the benefit review conference. The appealed decision was rendered by a hearing officer other than the hearing officer who held the May 1993 contested case hearing.

Regarding the appealed order, the hearing officer signed it on April 30, 1993. Our records indicate that the Texas Workers' Compensation Commission (Commission) distributed the decision and order on May 11, 1993, with a cover letter dated May 11, 1993. This decision was not then distributed, as it should have been, to the claimant's attorney. The Commission provided a copy of the decision to its (city) office on February 17, 1994. The attorney for the claimant states that February 17, 1994, "is the date I received actual

notice of this decision." The appeal by the attorney was dated March 7, 1994, postmarked March 8, 1994, and received by the Commission on March 9, 1994.

Section 410.202(a) requires 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* Rule 143.3. Rule 152.3(g) requires an attorney who contests the fee ordered by a hearing officer after a contested case hearing to request review pursuant to Rule 143.3. Because the attorney for the claimant indicated that she received the decision on February 17, 1994, her appeal was due 15 days from this date which is March 4, 1994. The attorney's request for appeal was postmarked Tuesday, March 8, 1993, which made her appeal late. We conclude that the attorney failed to file a timely request for review in accordance with Section 410.202(a) and Rule 143.3. 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. Section 410.169; Rule 142.16(f); Texas Workers' Compensation Commission Appeal No. 92265, decided August 5, 1992.

As noted above, however, that decision covers only the fees claimed through November 1992. It does not foreclose the attorney for the claimant from filing a request for fees rendered subsequent to the benefit review conference. We note that the fee request filed by the carrier's attorney, which is claimed by the claimant's attorney as indicating a double standard, does request fees for the contested case hearing and the appeal. If there has been such a request from claimant's attorney, it is not before us.

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Susan M. Kelley  
Appeals Judge

CONCUR:

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Philip F. O'Neill  
Appeals Judge

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Gary L. Kilgore  
Appeals Judge