APPEAL NO. 94310

This appeal arises under the Texas Workers' Compensation Act (at time of hearing, V.A.C.S., Article 8308-1.01 *et seq*; at time of this decision on appeal, TEX. LAB. CODE ANN. § 401.001 *et seq.*) (1989 Act). On November 13, 1992, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. He determined that appellant (claimant) did not suffer a compensable mental trauma injury. Claimant asserts that the action against him was not a legitimate personnel action and that his evidence as to this point was not accepted by the hearing officer; he adds that only the testimony of the carrier's expert witness appears to have been considered; he concludes that the decision was unfair. The file contains no response from the respondent (carrier).

DECISION

Finding that claimant's appeal was not timely filed, the decision of the hearing officer is final. *See* Section 410.169.

The 1989 Act (Section 410.202) and Tex. W. C. Comm'n, 28 TEX. ADMIN. CODE § 143.3 (Rule 143.3) give the appellant 15 days to file an appeal. Rule 143.3(c) then allows consideration of an appeal when mailed within 15 days and received by the Texas Workers' Compensation Commission (Commission) not later than 20 days after receipt of the hearing officer's decision. The decision in this case was distributed to claimant on December 14, 1992. Claimant now asserts that he received that decision and promptly responded with his appeal dated December 21, 1992; the Commission file does not contain a copy of that appeal so there is no indication that such appeal was received. Upon learning of the missing appeal, claimant forwarded a copy of that appeal dated December 21, 1992, which was received on March 7, 1994. The date of the appeal shows that claimant must have received a copy of the hearing officer's decision not later than December 21, 1992. No appeal was received by the Commission 20 days thereafter. Texas Workers' Compensation Commission Appeal No. 94065, decided March 1, 1994, held that even when an appeal is delayed by no fault of the claimant, the period for appeal does not become open-ended. With no appeal received within the statutory and regulatory time provided, the determination of the hearing officer became final by operation of law. *See* Section 410.169. The receipt of a copy of an appeal on March 7, 1994, did not constitute a timely appeal.

Had the appeal been timely made, a review of the decision and record of the hearing indicates that it would have been affirmed.

Claimant was a truck driver with (employer) for several years when, on (date of injury), he was given a letter from the branch manager of employer. That letter referred to threats made by claimant and notified him of an appointment made for him to be examined by a psychiatrist, (Dr. A). Claimant testified that when he got that letter, he told "him" that he was "full of [expletive deleted]"; he filed a grievance the next day. When claimant filed a claim on August 21, 1992, he wrote in "(date of injury)" as the date of injury; "mental" as

the nature of injury; but wrote "don't know" in response to the block that asked, "how did your accident happen." At the hearing, on cross-examination, claimant replied that he did not list the letter (or its effect on him) because he did not think it "could be pinpointed to that particular thing." He denied that he had threatened anyone.

Dr. A provided a report that indicated the claimant was stressed by his marriage, his health, and his job. Claimant denied to Dr. A that he had any symptoms of mental duress and that he had threatened anyone. Dr. A did not make a specific diagnosis, such as posttraumatic stress disorder, but did observe that the evaluation was significant for "excessively antagonistic and paranoid behavior." He characterized claimant's personality as "rigid." In his testimony, Dr. A said that claimant did not relate a specific physical event as being the cause of his problem. He added that claimant does not think he has a mental problem and refused to allow psychological tests that might clarify what, if any, problem exists. Dr. A stated that he did not think claimant's emotional problem was related to accidental injury and was not related to a definite time, place, and cause. He added that claimant's bizarre behavior was reported to be ongoing for over two years. Dr. A answered in the negative when asked if claimant's emotional problems resulted from the letter of (date of injury).

At the hearing, both claimant and carrier submitted the reports of Dr. A. In addition, the claimant offered the letter of (date of injury), which told him to see Dr. A, and a letter of August 17, 1992, from the same branch manager which notified him that he was being "held out of service." Both were admitted over objection by the carrier. In addition, the hearing officer asked claimant if he had other, material evidence to offer; the hearing officer said he would grant a continuance to allow him to do that. Claimant replied that he did not wish to do that--his other psychiatric evaluation was "private."

At the end of the hearing there was some discussion that little evidence had been put forward as to whether the letter of (date of injury) constituted a "legitimate personnel action." After first asserting that the evidence shows the action to be legitimate, the carrier "withdrew" its assertion that the action was legitimate. At that point, the hearing officer decided to take no evidence offered by claimant that the provisions of the employment contract were not met.

The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Section 410.165. The hearing officer admitted into evidence all documents offered into evidence by the claimant. Although discussion at the end of the hearing, after both parties had rested, explored the statutory policy about legitimate personnel action and how the employment contract affected that question, no specific offer of evidence was made. The hearing officer then made no finding of fact in regard to whether the action was legitimate or not. Section 408.006, as it is divided into an "a" section and "b" section, does not require a finding in regard to legitimate personnel action in order to determine that a claim for mental trauma is not compensable. *See* Texas Workers' Compensation Commission Appeal No.

92210, decided June 29, 1992, in which there also was no finding as to whether an action was legitimate or not; in that case the hearing officer did not find that a specific event caused the diagnosed condition of posttraumatic stress disorder, so there was no compensable mental trauma, regardless of whether an action was legitimate or not. The question of a legitimate personnel action (Section 408.006(b)) comes into play when a claimant has shown a mental trauma injury that may be compensable (Section 408.006(a)), because at that point, even with a finding that a specific event caused the mental trauma injury, there is no compensability if it arose from a legitimate personnel action.

The evidence sufficiently supported the hearing officer's finding of fact that the (date of injury) letter did not generate a mental trauma injury. There is no diagnosis of a particular disorder either in the report of Dr. A or in his testimony. Dr. A, in addition, testified that claimant did not believe that he had a problem. Dr. A also stated that claimant's problems did not result from that letter. Claimant himself testified that he did not believe he could pinpoint how his accident happened when he filled out the claim form, even though he knew he had a mental injury at the time. If mental trauma were found, it is not compensable without a finding of a particular event as causative. *See* Texas Workers' Compensation Commission Appeal No. 931016, decided December 16, 1993. There is no finding of any particular event that caused mental trauma in the claimant, and the evidence sufficiently supports the decision of the hearing officer to make no finding of fact in this regard.

The hearing officer admitted each of claimant's exhibits, and his Statement of Evidence shows that he considered each of claimant's exhibits. In addition, the record of testimony indicates no unfairness to claimant; the hearing officer gave the claimant an opportunity to submit more evidence if he wanted a continuance, but the claimant declined. Throughout the hearing, the hearing officer was patient and sought to accommodate the claimant in presenting his side of the dispute.

Had the appeal been timely filed, the determinations of the hearing officer would have been upheld. With no timely appeal, the decision and order of the hearing officer are final in accordance with Section 410.169.

Joe Sebesta
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Susan M. Kelley
Appeals Judge