

## APPEAL NO. 94314

+

This appeal is brought pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 3, 1994, in (city), Texas, with (hearing officer) presiding as hearing officer. The sole issue at the hearing was whether "the Carrier [respondent] is responsible for payment of medical bills from treating doctor incurred prior to approval by the [Texas Workers' Compensation] Commission to change to that doctor." The hearing officer determined that the carrier was not responsible for the payment of these bills. The claimant disputes certain findings of fact of the hearing officer about what the carrier knew of the treatment and about the identity of the claimant's treating doctor and requests that 28 Tex. W.C. Comm'n, TEX. ADMIN. CODE § 126.7 (Rule 126.7) (repealed effective July 1, 1993, and replaced by Rules 126.8 and 126.9) dealing with the circumstances under which an employer-selected doctor may be deemed a treating doctor, be found "ultra vires and void." The carrier replies that claimant's appeal is untimely and incorrectly filed, but if jurisdiction is assumed, that the decision of the hearing officer is supported by sufficient evidence and is correct as a matter of law.

### 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 and order of the hearing officer have become final pursuant to the provisions of Section 410.169

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." A request for review is presumed to be timely filed if it is mailed on or before the 15th day after the date of receipt of the hearing officer's decision, and it is received by the Commission not later than the 20th day after the date of receipt of the decision. Rule 143.3(c).

Records of the Commission show that the hearing officer's decision was mailed to the claimant and to his attorney on February 18, 1994, with a cover letter of February 17, 1994. The cover letter contained in large type the correct address for submitting an appeal. The claimant indicated in his appeal that the decision of the hearing officer was received on February 22, 1994. The appeal was required to be mailed no later than 15 days after receipt, that is, by March 9, 1993, and to be received by the Commission no later than March 14, 1994.

A facsimile transmission (fax) of this appeal was first stamped by the Commission as being received on March 17, 1994. The cover letter of the appeal was dated March 2, 1994, and had the wrong (city) street address and postal zip code. The street address was lined through on the fax copy and "Attn: V" written in by hand. The fax transmittal page contained the note: "I will still send this certified mail to your attention." On March 21, 1994, the Commission received by certified mail a copy of the same appeal. The envelope bore the correct address, but the copy of the appeal contained the same incorrect address and there

was no "Attn: V" annotation. There is no evidence that the claimant's appeal was received by any office of the Commission earlier than March 17, 1993. The claimant's appeal was, thus, not timely filed. See Texas Workers' Compensation Commission Appeal No. 931172, decided January 18, 1994.

Having determined that the claimant's appeal was not timely filed, the decision and order of the hearing officer are final. Section 410.169.

---

Alan C. Ernst  
Appeals Judge

CONCUR:

---

Robert W. Potts  
Appeals Judge

---

Thomas A. Knapp  
Appeals Judge