

APPEAL NO. 991820

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on March 8, 1999. The issues at the CCH were whether the _____, compensable injury is a cause of the claimant's claimed impotency and reflex sympathetic dystrophy (RSD) and whether the carrier timely contested the claimant's claimed impotency and RSD. The hearing officer determined that the _____, compensable injury was not a cause of the claimant's claimed impotency, that the carrier did not timely contest the claimant's claimed impotency and it was therefore part of the claimant's compensable injury, and that the carrier did not timely contest compensability of the claimant's RSD condition and it was therefore compensable. The carrier appealed and the claimant responded, but the Appeals Panel determined that the carrier's appeal was untimely and the decision and order of the hearing officer had become final pursuant to Section 410.169. Texas Workers' Compensation Commission Appeal No. 990756, decided May 26, 1999 (Unpublished).

On July 27, 1999, hearing officer issued a Commission Order for Attorney's Fees (Order), covering services for the period from May 1, 1999, through June 22, 1999, approving 2.25 hours out of 7.25 hours requested, for a total approved fee of \$162.50 out of \$912.50 requested. The only item disapproved was 5.00 hours for drafting and filing pleadings/documents on May 1, 1999, in connection with the claimant's response to the previously mentioned claimant's appeal. This item was denied for the reason "Ex Guideline/Unreasonable." The appellant (attorney) appeals, contending that she had no way of knowing when the carrier received the hearing officer's decision and thus did not know that the carrier's appeal of that decision was untimely and that her response on behalf of the claimant was reasonable, necessary, and allowed by the guidelines. The file contains no response from the claimant or the carrier.

DECISION

A timely appeal not having been filed, the Order has become final.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 152.3(e) (Rule 152.3(e)) provides that an appeal to the Appeals Panel of an order on attorney's fees must be made under Rule 143.3. Under Rule 143.3(c), an appeal, to be timely, must be mailed on or before the 15th day after receipt of the hearing officer's decision (in this case receipt of the Order) and received by the Texas Workers' Compensation Commission (Commission) not later than the 20th day after receipt of the Order. The attorney indicates in her appeal that she received the Order on July 20, 1999, and that the appeal should be filed no later than August 16, 1999, since the 15th day fell on a Saturday. This is correct under Rule 102.3(a)(3). The attorney's certificate of service reflects service on the other parties on September (sic, should be August) 16, 1999, and the attorney's cover letter is dated August 16, 1999. However, the envelope which contained the attorney's appeal is postmarked August 17, 1999, and is stamped to show receipt by the Commission on August 19, 1999. The attorney's appeal, having been mailed later than August 16, 1999, is untimely.

As to the merits of the attorney's appeal, in a recent case the appellant indicated that she was told that the attorney's fee system rejects second appeals and, in that case, the

Appeals Panel reversed that Order and rendered a decision approving the fees requested for appealing the underlying case to the Appeals Panel. Texas Workers' Compensation Commission Appeal No. 991583, decided September 8, 1999 (Unpublished). We note in the case at hand that, in addition to Appeal No. 990756, *supra*, the claimant's case has involved Texas Workers' Compensation Commission Appeal No. 980480, decided April 22, 1998. Any fees paid to the attorney on that appeal may have resulted in improper denial of fees on the second appeal.

However, no timely appeal having been filed, the Order has become final.

Tommy W. Lueders
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Dorian E. Ramirez
Appeals Judge