

APPEAL NO. 000731

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 15, 2000. The issues at the CCH were whether the respondent/cross-appellant-s (claimant) compensable injury of _____, extends to and includes mental depression as a result of the compensable injury and whether the appellant/cross-respondent (self-insured) waived the right to contest compensability of mental depression as an extent of the claimant-s compensable injury by not contesting compensability within 60 days of being notified of that extent of injury. The hearing officer determined that the claimant-s compensable injury extends to and includes mental depression only because the self-insured waived its right to contest compensability by not contesting within 60 days of being notified. The self-insured appeals, urging that the hearing officer-s determination on the waiver issue should be reversed because the hearing officer incorrectly relied on Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE ' 102.5(g) (Rule 102.5(g)), which was superceded by Rule 102.5(c), effective August 29, 1999. The claimant replies that the hearing officer correctly applied Rule 102.5(g) and appeals the hearing officer-s determination that the injury does not include mental depression or chronic pain syndrome. The appeals file does not contain a response from the self-insured.

DECISION

Reversed and rendered.

The claimant's response is timely as a response but is untimely as an appeal of the hearing officer's determination that the claimant's injury of _____, does not extend to and include mental depression. Pursuant to Section 410.202 and Rule 143.3(c), an appeal, to be timely, must be filed or mailed not later than the 15th day after the date of receipt of the hearing officer's decision. Records of the Texas Workers' Compensation Commission (Commission) show that the hearing officer's decision was mailed to the claimant on March 23, 2000, with a cover letter of the same date. The address to which the hearing officer-s decision was sent is the same as the address which the claimant gave on the sign-in sheet for the CCH.

Under Rule 102.5(a), as amended effective August 29, 1999, all communications sent to a claimant will be sent to the most recent address or facsimile number supplied on certain employer or carrier forms or any verbal or written communication from the claimant. Rule 102.5(d), as amended effective August 29, 1999, provides that, unless the great weight of evidence indicates otherwise, the claimant is deemed to have received the hearing officer-s decision five days after it was mailed. The claimant does not state in her appeal when she received the hearing officer-s decision. Under Rule 102.5(d), the claimant is deemed to have received the hearing officer's decision on Tuesday, March 28, 2000, five days after it was mailed. The claimant had 15 days, or until Wednesday, April 12, 2000, to mail her request for review. The claimant's request for review is dated April 19, 2000, and bears a copy of a

Laredo field office date stamp of April 18, 2000, which reads "envelope postmark date." The claimant's certificate of service recites service on the Commission and the self-insured on April 20, 2000, and the envelope which contained the claimant's appeal is postmarked April 20, 2000. The Appeals Panel has held that an appeal filed with a Commission field office within the 15-day period for filing an appeal is timely. Texas Workers' Compensation Commission Appeal No. 94321, decided May 3, 1994. However, since the claimant's request for review was not mailed by the 15th day after receipt of the hearing officer's decision and was not filed by hand delivery by the 15th day after receipt of the hearing officer's decision, it was untimely filed.

The hearing officer determined that the self-insured waived its right to contest compensability as an extent of the claimant's compensable injury by not contesting its compensability within 60 days of being notified of that extent of injury. In so determining, the hearing officer relied on Rule 102.5(g), in effect in 1996, and made findings that the self-insured received written notice of the claimant's depression by September 20, 1996; that on November 6, 1996, the self-insured filed its contest of compensability with an office other than the field office managing the claim; and that the field office managing the claim did not receive the self-insured's Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) by the 60th day after September 20, 1996. The hearing officer relied on our previous interpretation of Rule 124.6, which was repealed effective March 13, 2000, in resolving the issue of carrier waiver of an extent-of-injury. Rule 124.3(c), which became effective March 13, 2000, provides that Section 409.021 and the implementing provisions of this statute in Rule 124.3(a) do not apply to disputes of extent of injury. In Texas Workers' Compensation Commission Appeal No. 000713, decided May 17, 2000, the Appeals Panel considered the effect of new Rule 124.3 on carrier waiver issues of extent-of-injury cases. In that case, we held that "new Rule 124.3 is applicable to those cases in which the [hearing] is convened on or after March 13, 2000 [the effective date of Rule 124.3], to address a disputed issue of carrier waiver in the context of an extent of injury question, because it precludes the Commission from imposing a waiver after that date." The hearing in this case was held on March 15, 2000; thus, the hearing officer erred in not applying Rule 124.3. We do not reach the issue of whether Rule 102.5(g) or Rule 102.5(c), effective August 29, 1999, applies, as it has no effect on the outcome of this case. We reverse the determination of the hearing officer that the self-insured waived its right to contest compensability of the claimant's mental depression and render a new decision that the self-insured did not waive its right to contest compensability of the claimant's mental depression. Based on the hearing officer's determination that the claimant's compensable injury does not extend to and include mental depression, we reverse the hearing officer's

order and order that the self-insured is not liable for workers=compensation benefits relating to the claimant=s mental depression.

Dorian E. Ramirez
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Judy L. Stephens
Appeals Judge