

APPEAL NO. 002217

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 June 9, 1999. The issues at the CCH were whether the claimant was an employee of (employer) or an independent contractor at the time of the claimed injury; whether the claimant sustained a compensable injury to the low back on _____; and whether the claimant had disability and, if so, for what periods. The hearing officer determined in favor of the claimant on all three issues.

On January 25, 2000, EB issued a Commission Order for Attorney's Fees (Order), covering services for the period from May 14, 1999, through August 13, 1999, approving none of the \$257.09 in expenses requested. ¹The decision and order issued after the June 9, 1999, CCH indicates that Mr. W represented the carrier at the CCH. The order denying the requested expenses indicates that the attorney was Ms. D. The appellant (attorney) appeals, requesting that the Appeals Panel approve the requested expenses and write an opinion discussing "the circumstances surrounding this arbitrary denial of expenses." The appeal file contains no response from the carrier or the claimant.

DECISION

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

Records of the Texas Workers' Compensation Commission (Commission) show that the Order was dated January 25, 2000. Pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(d) (Rule 102.5(d)), the attorney is deemed to have received the Order five days later, on January 30, 2000. If an appeal to the Appeals Panel had been appropriate, the attorney had 15 days, or until Monday, February 14, 2000, to file his appeal. Rules 102.3(e) and 143.3(c). Although the attorney's certificate of service reflects service on the carrier and the claimant on February 7, 2000, the records of the Commission do not reflect receipt of the appeal until September 20, 2000, when a copy of the appeal was received along with a cover letter dated September 13, 2000, stating that an earlier request for review was submitted to the Appeals Panel on February 7, 2000. However, the Commission apparently never received that earlier request for review.

Pursuant to Rule 143.3(c), an appeal is presumed to have been timely filed if it is mailed not later than the 15th day after the date of receipt of the hearing officer's decision (or, in this case, the Order) and received by the Commission not later than the 20th day after receipt of the Order. Both portions of Rule 143.3(c) must be complied with in order for an appeal to be timely. Texas Workers' Compensation Commission Appeal No. 94065, decided March 1, 1994; Texas Workers' Compensation Commission Appeal No. 94111, decided March 10, 1994; Texas Workers' Compensation Commission Appeal No. 941225

¹. The Decision and Order issued after the June 9, 1999, CCH indicates that Mr. W represented the carrier at the CCH. The Order denying the requested expenses indicates that the attorney was Ms. D

decided October 24, 1994. The last day for the carrier to timely file an appeal would have been February 14, 2000, and the last day for the appeal to have been timely received by the Commission was Monday, February 21, 2000 (the 20th day having fallen on a Saturday). The attorney's appeal is untimely, having been received by the Commission on September 20, 2000.

In addition, Rule 152.3(d) provides that, except as provided by Rule 152.3(e), a party who contests an attorney's fee shall request a CCH no later than the 15th day after receipt of the Order. Rule 152.3(e) provides that a party shall contest an attorney's fee order issued by a hearing officer after a CCH by requesting review by the Appeals Panel. In the case at hand, the Order was not issued by a hearing officer. Thus, the attorney should have requested a CCH rather than requesting review by the Appeals Panel. The attorney's 15-day period for requesting a CCH has also expired as of February 14, 2000.

A timely appeal not having been received by the Commission, an appeal to the Appeals Panel not being the appropriate way to contest the Order in this case, and a CCH not having been timely requested, the Order has become final.

Tommy W. Lueders
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert W. Potts
Appeals Judge