

APPEAL NO. 011825  
FILED SEPTEMBER 13, 2001

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 July 12, 2001. With regard to the issues before her, the hearing officer determined that the appellant (claimant) did not have good cause for failing to attend a required medical examination (RME) on March 13, 2001, and that the claimant is not entitled to receive temporary income benefits from March 13, 2001, through May 6, 2001.

The claimant appealed, arguing that the hearing officer erred in determining that the claimant was deemed to have received notice of her RME within five days of January 30, 2001, and that the hearing officer erred in determining that the claimant did not have good cause for failing to attend the RME on March 13, 2001. The respondent (carrier) urges affirmance of the hearing officer's decision.

DECISION

Affirmed.

The claimant testified that she did not receive notice of a scheduled RME appointment with Dr. H set for March 13, 2001, until two weeks thereafter, March 26, 2001, when she contacted the Texas Workers' Compensation Commission (Commission) about an "advance in pay and was denied the advance in pay due to benefits being denied." At the CCH, the claimant acknowledged that she may have received an unsigned Order from the Commission in which she was required to attend an RME, but was uncertain. The claimant testified that she had never had problems in the past receiving mail from the Commission at her apartment complex mail station.

The hearing officer did not err in determining that the claimant was deemed to have received notice of her RME on or before February 5, 2001 (within five days of January 30, 2001, the date the Commission mailed the Order to the claimant), pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(h) (Rule 102.5(h)), amended June 17, 2001, and formerly Rule 102.5(d). Rule 102.5(h) provides that "[f]or purposes of determining the date of receipt for those notices and other written communications which require action by a date specific after receipt, the Commission shall deem the received date to be five days after the date mailed." The hearing officer determined that the Commission mailed the Order on January 30, 2001, and that the "claimant was deemed to have received notice of her [RME] within five days of the date such Order was mailed to her, or on or before February 5, 2001, since the fifth day after the Order was mailed would have fallen on Sunday, February 4, 2001."

The hearing officer did not err in determining that the claimant did not have good cause for failing to attend the RME on March 13, 2001. The hearing officer was not persuaded that the "claimant did not receive [the Order]," and the hearing officer "is not of

the opinion that claimant has successfully rebutted the presumption of receipt established by the Commission Rule [102.5(h)].”

It is the hearing officer, as the sole judge of the weight and credibility of the evidence (Section 410.165(a)), who resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **FIDELITY AND GUARANTY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
800 BRAZOS  
AUSTIN, TEXAS 78701.**

---

Thomas A. Knapp  
Appeals Judge

CONCUR:

---

Gary L. Kilgore  
Appeals Judge

---

Michael B. McShane  
Appeals Judge