

APPEAL NO. 012254
FILED NOVEMBER 13, 2001

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On July 12, 2001, a contested case hearing (CCH) was held. The CCH was held on a disputed disability issue. Following the CCH, the hearing officer issued an order for attorney's fees on August 22, 2001, approving some, but not all, of the total fee requested by the appellant (carrier's attorney). The carrier's attorney appealed. No response was received from the carrier or the claimant.

DECISION

The August 22, 2001, order for attorney's fees (the order) has become final because a timely appeal of that order was not filed with the Texas Workers' Compensation Commission (Commission).

Unless the great weight of the evidence indicates otherwise, the carrier's attorney is deemed to have received the order five days after the date it was mailed. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(d) (Rule 102.5(d)). The carrier's attorney states that she did not receive the order until September 7, 2001, and the copy of the order attached to the appeal has a date-received stamp of September 7, 2001. The Appeals Panel has held that when Commission records show distribution on a particular day to the correct address, the mere assertion that the decision was received after the deemed date of receipt is not sufficient to extend the date of receipt past the deemed date of receipt. Texas Workers' Compensation Commission Appeal No. 982315, decided November 6, 1998. The deemed date of receipt was August 27, 2001. Pursuant to Rule 152.3(e), an attorney who contests the fee ordered by a hearing officer after a benefit CCH shall request review by the Appeals Panel pursuant to the provisions of Rule 143.3. Rule 143.3(c) provides that a request shall be presumed to be timely filed if it is: (1) mailed on or before the 15th day after the date of receipt of the hearing officer's decision; and (2) received by the Commission not later than the 20th day after the date of receipt of the hearing officer's decision. 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. Pursuant to Section 410.202(d), effective for an appeal filed on or after June 17, 2001, Saturdays and Sundays and holidays listed in Section 662.003, Government Code, are not included in the computation of the time in which a request for an appeal or a response must be filed.

Since the carrier's attorney is deemed to have received the hearing officer's order on August 27, 2001, the attorney had until September 18, 2001, to mail the appeal to the Commission, which was the 15th day after the deemed date of receipt not including Saturdays and Sundays and holidays listed in Section 662.003 of the Government Code. The attorney's appeal is dated September 20, 2001, and the envelope in which the appeal was mailed to the Commission has a postage meter stamp of September 20, 2001. Since

the carrier's attorney's appeal was not mailed to the Commission on or before September 18, 2001, it was not timely filed with the Commission. Consequently, the order has become final.

Robert W. Potts
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Philip F. O'Neill
Appeals Judge