

APPEAL NO. 023126
FILED FEBRUARY 4, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was scheduled on November 14, 2002. Prior to the scheduled hearing date, the appellant (attorney) notified the Texas Workers' Compensation Commission (Commission) that he would not be in attendance. Respondent 1 (claimant) did not appear at the hearing or give advance notice confirming or denying his intention to appear. Subsequent to the scheduled hearing date, the Commission sent a letter to both the attorney and the claimant advising that they had until November 24, 2002, to contact the Commission to request an opportunity to show good cause for failing to attend the hearing. Commission records indicate that the claimant called the Commission on November 22, 2002, requesting that the hearing on attorney's fees be rescheduled. The hearing was not rescheduled, the record was closed on December 2, 2002, and a decision and order was issued on December 5, 2002. The hearing officer, William M. Routon II, determined that attorney fees in the amount of \$0 are reasonable and necessary. The attorney appeals this decision. The appeal file does not contain a response from either the claimant or respondent 2 (carrier).

DECISION

Reversed and remanded.

The attorney asserts on appeal that the Commission did not have jurisdiction to address the claimant's dispute of the attorney fee order, as the claimant did not do so in a timely manner. In support of his position, the attorney alleges that in a letter dated November 13, 2002, the hearing officer was notified that the claimant's dispute was not timely made. As we are unable to discern from the record whether the Commission had jurisdiction to act on the claimant's dispute of the attorney fees in question, which were ordered for the period of March 2001 through July 2002, we find it necessary to reverse the hearing officer's decision and remand the case to make findings as to whether the claimant timely disputed the ordered attorney's fees in accordance with Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 152.3(d) (Rule 152.3(d)). In order to accomplish this, it will be necessary for the hearing officer to make specific findings as to when the orders in question were mailed to the claimant, the dates upon which they were deemed received, and the dates upon which the claimant disputed the orders. The hearing officer should include in the hearing record the documents relied upon in making these findings of fact.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Commission's Division of Hearings, pursuant to Section 410.202, which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods.

Chris Cowan
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert W. Potts
Appeals Judge