

APPEAL NO. 032394
FILED OCTOBER 29, 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 (CCH) was held on November 12, 2002. The hearing officer determined that respondent 2 (claimant) is not entitled to supplemental income benefits (SIBs) for the third quarter, but that he is entitled to SIBs for the fourth quarter. Appellant (attorney) submitted a request for attorney fees on June 26, 2003. In a July 7, 2003, order (Order), the hearing officer denied the attorney fees. A Dispute Resolution Information System note apparently related to this order states, "ATTORNEY SHOULD RE-APPLY, AND ONLY ASK FOR SIBS PAYMENT FOR 4TH QUARTER. . . . 3D QUARTER WAS DENIED, AND THAT FEE CAN BE SUBMITTED ON A SEPARATE APP, NON-SIBS." In a July 14, 2003, letter, attorney forwarded to the Texas Workers' Compensation Commission (Commission) a request for a "[CCH] to appeal the decision made on the above-referenced attorney's fees order." In the letter, attorney said, "[t]he fees were accrued since August 2002 to December 30, 2002, for the claimant's 3rd and 4th quarters." In a September 5, 2003, handwritten letter sent by facsimile transmission and received that same day, attorney said, "[w]e timely appeal this order – we have not gotten a hearing date nor decision on this appeal" A response to the request for review was not filed by claimant or respondent 1 (carrier).

DECISION

Finding that the request for review was not timely filed and the jurisdiction of the Appeals Panel has not been properly invoked, the Order has become final.

The Order in this case followed a November 12, 2002, CCH regarding SIBs entitlement for the third and fourth quarters for the above-named claimant. At the hearing, the hearing officer raised the issue of attorney's fees by stating that he assumed the parties would file fee applications "in the customary manner." The hearing officer then went on to discuss what fees might be awarded to attorney and when the fee applications should be filed. Attorney did not present any evidence regarding his fees.

We will treat the September 5, 2003, handwritten letter sent by attorney to the Commission as a request for review of the Order. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 152.3(e) (Rule 152.3(e)) provides that an attorney, claimant, or carrier who contests the fee ordered by a hearing officer after a CCH shall request review by the Appeals Panel pursuant to the provisions of Rule 143.3. Rule 143.3(c) provides that a request for review is presumed to be timely filed if it is mailed not later than the 15th day after 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 hearing officer's decision. The Order was dated on July 7, 2003, and the letter from attorney indicates that it was received at least by July 14, 2003. We will assume for the purposes of this appeal that

July 14, 2003, was the fifth day after the Order was mailed to attorney. See Rule 102.5(d) regarding deemed receipt of written communications sent by the Commission. Given our assumed date of receipt of July 14, 2003, the attorney would have until Monday, August 4, 2003, to file an appeal of the Order. Attorney did not file a request for review until September 5, 2003. This request for review was untimely. See Texas Workers' Compensation Commission Appeal No. 021432, decided July 25, 2002.

Regarding the July 14, 2003, letter sent by attorney to the Commission requesting a CCH, this was not a request for review by the Appeals Panel and will not be treated as such. Rule 152.3(d) requires any party who wants to contest fees fixed and approved by the Commission to request a "benefit [CCH]." The only exception is Rule 152.3(e), which provides: "An attorney, claimant, or carrier 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 § 143.3 of this title." [Emphasis added.] The Order in this case was entered after a CCH on SIBs entitlement where the attorneys were asked if they wanted to present evidence regarding their fees. The proper way to appeal the Order was not to request a CCH, but to file a timely request for review, which was not done in this case.

Because a timely request for review of the Order was not filed, the Order has become final.

The true corporate name of the insurance carrier is **POTOMAC INSURANCE COMPANY OF ILLINOIS** and the name and address of its registered agent for service of process is

**C. J. FIELDS
5901 NORTH CENTRAL EXPRESSWAY
DALLAS, TEXAS 75206.**

Judy L. S. Barnes
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Margaret L. Turner
Appeals Judge