

APPEAL NO. 042330
FILED NOVEMBER 3, 2004

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 held on May 12, 2004. The issue at the hearing was whether any portion of an attorney's fee award of \$650.00, awarded to appellant (claimant's attorney) was excessive. Respondent 1 (claimant) requested the hearing. Claimant appeared at the hearing but respondent 2 (carrier) and the attorney did not appear. The hearing officer determined that the attorney's fee award was excessive. On September 14, 2004, the attorney mailed to the Texas Workers' Compensation Commission (Commission) what appears on the surface to be an untimely appeal. In the appeal, the attorney said that he did not receive notice of the May 12, 2004, hearing. He said the reason he failed to file an appeal by July 14, 2004, is because he did not receive notice of the hearing and did not receive the 10-day letter sent by the hearing officer. The attorney contends that he became aware of the hearing officer's Decision and Order only when he was advised by the State Bar of Texas that the claimant had filed a grievance seeking the return of the fee. The attorney asks that he be granted a hearing. There is no response from claimant or carrier in the file.

DECISION

We reverse and remand.

We do not reach the merits in this case regarding whether any portion of an attorney's fee award was excessive. Given our review of the file and assertion of lack of notice, we accept the appeal. We reverse and remand for the purpose of inquiring into the question of whether there was good cause for the attorney's failure to appear at the May 12, 2004, hearing. In his appeal, the attorney asserts that he did not receive notice of the May 12, 2004, hearing or a copy of the Decision and Order following the hearing. We note that in the compact disc recording of the proceeding, the hearing officer did not introduce into evidence a notice of the May 12, 2004, hearing. The notice of hearing contained in the file appears to list an incorrect zip code for the attorney. We also note that the cover letter for the Decision and Order indicates it was mailed to the claimant, with copies to the carrier, the employer, and another attorney not involved in this matter. There is no indication that the Decision and Order was mailed to the attorney in this case. Although the hearing officer indicates that a 10-day letter was mailed to the attorney, it also appears to list the incorrect zip code for the attorney. We find it necessary to return this case for an inquiry regarding good cause. Tex. W. C. Comm'n, 28 TEX. ADMIN. CODE § 142.6(c) (Rule 142.6(c)) provides that:

Notice of hearing. After setting a hearing, the [Texas Workers' Compensation Commission (Commission)] shall furnish to the parties, by first class mail or personal delivery, written notice of the date, time, duration, and location of the hearing.

Rule 142.16(d) provides that:

No later than seven days after filing the decision, the division shall furnish to the parties, by first class mail or personal delivery:

- (1) a file-stamped copy of the decision

We find there is reason to inquire as to whether sufficient notice of the hearing and notice of the Decision and Order were given to the attorney and consequently whether he had good cause for not appearing at the May 12, 2004, hearing. If good cause is determined to exist, the claimant's attorney should be provided the opportunity at another hearing.

We reverse the hearing officer's decision and order and remand the case for further consideration and development of evidence, as deemed appropriate by the hearing officer. 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. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

Judy L. S. Barnes
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Edward Vilano
Appeals Judge