

DOCKET NO. 453-04-4332.M2

—, § **BEFORE THE STATE OFFICE**
Petitioner §
v. § **OF**
TASB RISK MANAGEMENT FUND, §
Respondents § **ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

The subject of this decision and order is a motion to dismiss brought by Respondent TASB Risk Management Fund Company (the Carrier). In its motion, the Carrier contends that this case should be dismissed from the docket of the State Office of Administrative Hearings (SOAH) because Petitioner failed to timely file a request for hearing with the Texas Workers' Compensation Commission (the Commission). In this decision, the Administrative Law Judge (ALJ) finds that Petitioner did not timely file a request for hearing, and therefore, SOAH lacks jurisdiction of this case. The matter is hereby dismissed from the SOAH docket.

I. ANALYSIS

A person requesting a hearing must file a written request with the Commission's Chief Clerk of Proceedings, Hearings Division, not later than 20 days after receipt of the findings and decision of the Independent Review Organization (IRO). 28 TEX. ADMIN. CODE §148.3(a). The IRO mailed its findings and decision to Petitioner on January 30, 2004. Pursuant to 28 TEX. ADMIN. CODE §102.5(d), the decision was deemed received by Petitioner five days after mailing. Five days from the date of mailing was February 4, 2004. Petitioner appeared at a hearing on April 27, 2004, and was unable to rebut the presumption that the decision was received by her any later than February 4, 2004.

Unless otherwise specified in the Commission's rules, in order to be timely filed, a document must be *received* by the Commission before the end of normal business hours on the last permissible day for filing. 28 TEX. ADMIN. CODE §102.3(e). Accordingly, Petitioner's request for hearing had to be received by the Chief Clerk of Proceedings by the close of business on February 24, 2004, in order to be timely. It was not received until March 3, 2004.

Because Petitioner failed to timely file a request for hearing, SOAH lacks jurisdiction of this matter, and this matter should be dismissed from SOAH's docket.

III. FINDINGS OF FACT

1. On January 30, 2004, an Independent Review Organization (IRO) issued its Findings and Decision in MDR docket number M2____. The IRO's Findings and Decision was mailed on January 30, 2004 to Petitioner.
2. Petitioner is presumed to have received the IRO's Findings and Decision on February 4, 2004.
3. The Commission received Petitioner's appeal of the IRO decision on March 3, 2004.
4. Based on Findings of Fact Nos. 1-3, Petitioner's failed to request a hearing within 20 days after Petitioner's receipt of the IRO's Findings and Decision.

IV. CONCLUSIONS OF LAW

1. A person requesting a hearing must file a written request for hearing with the Commission not later than 20 days after receipt of the official notice of adverse action from the Commission. 28 TEX. ADMIN. CODE §148.3(a).
2. Based on Findings of Fact Nos. 1-3, Petitioner failed to timely file a request for hearing to appeal the decision of the Commission's MRD in MDR docket number M5____.
3. Petitioner's failure to file a request for hearing within 20 days after receipt of the MRD's Findings and Decision renders SOAH without jurisdiction to proceed to hearing.

ORDER

IT IS, THEREFORE, ORDERED that the Carrier's motion to dismiss is granted and this matter is hereby dismissed and withdrawn from the docket of the State Office of Administrative Hearings.

SIGNED April 28, 2004.

**BILL ZUKAUCKAS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**