

APPEAL NO. 951704

This case returns to us after our remand in Texas Workers' Compensation Commission Appeal No. 950678, decided June 8, 1995. In Appeal No. 950678 we affirmed the hearing officer's determinations that the appellant's (claimant's) date of injury was _____, and that the claimant had disability from October 1, 1994, through the date of the contested case hearing (CCH), April 7, 1995; we reversed the hearing officer's determination that the claimant sustained a repetitive trauma injury and we rendered a decision that the claimant was injured in the course and scope of her employment on _____, as a result of a specific, accidental injury; we reversed the hearing officer's determinations that the claimant had good cause for not reporting her injury to her employer until June 30, 1994, and that the claimant timely filed her claim for compensation; and we remanded for further consideration and development of the evidence on the issues of notice of injury and filing of the claim for compensation. A CCH on remand was held in _____, Texas, on August 25, 1995, with (hearing officer) presiding as the hearing officer. The CCH was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). The claimant appeals the hearing officer's decision on remand that she did not give timely notice of injury to her employer, that she did not have good cause for failing to timely report her injury to her employer, and that she did not timely file her claim for compensation. The respondent (carrier) requests affirmance.

DECISION

Affirmed.

Since the facts of this case are set out at length in Appeal No. 950678, *supra*, we will not set out here a full review of the evidence presented.

The claimant injured her back at work on _____. She mailed an Employee's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41) to the Texas Workers' Compensation Commission (Commission) on July 23, 1994. The Commission received the TWCC-41 on July 28, 1994. Pursuant to Section 409.003, the claimant's TWCC-41 had to be filed with the Commission not later than one year after the date on which the injury occurred. See *also* Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 122.2 (Rule 122.2). Rule 102.7 provides as follows:

Unless otherwise specified in the Act or these rules, forms, reports, and other documents required to be filed by a specified time will be considered timely filed only if received by the commission at Austin, or at an appropriate regional field office, prior to or during business hours on the last permissible day of filing. When the last day of filing is a Saturday, Sunday, a legal holiday on which the commission is not required to conduct business, or any other day on which the commission or the appropriate office of the commission is not open for business, then the time is extended as described

in Sec. 102.3 of this title (relating to Computation of Time).

One year after the _____, date of injury was Monday, (one year after date of injury). Under Rule 102.7, the TWCC-41 would be considered to be timely filed only if received by the Commission prior to or during business hours on (one year after date of injury), which was the last permissible day for filing of the TWCC-41. Consequently, the hearing officer did not err in concluding that the claimant did not timely file a claim for compensation with the Commission. We note that Rule 143.3(c), which is cited by the claimant, and which provides for a presumption of timely filing of a request to the Appeals Panel to review a decision of a hearing officer, does not provide for a presumption of timely filing of a claim for compensation. Rule 122.2, which pertains to a claim for compensation, does not contain a provision allowing for a presumption of timely filing of a claim for compensation if the claim is mailed on or before the one-year filing period expires. We also note that the Texas Rules of Appellate Procedure cited by the claimant do not apply to the filing of a claim for compensation with the Commission. Our decision in this case is consistent with our recent decision in Texas Workers' Compensation Commission Appeal No. 951264, decided September 8, 1995, wherein we held that a carrier's request for a benefit review conference on the issue of entitlement to supplemental income benefits was not timely filed with the Commission when the request was mailed within the allotted 10-day period, but was not received by the Commission until after the allotted 10-day period had expired.

It is undisputed that on the date of injury, _____, the claimant was employed by (employer), and was assigned to work for a company owned by FH. Both the claimant and RL, who is a service representative for (employer), testified that the claimant did not notify (employer) of her injury of _____, until June 30, 1994. Section 409.001(a) provides that an employee or a person acting on the employee's behalf shall notify the employer of the employee of an injury not later than the 30th day after the date on which the injury occurs. Under Section 409.001(b), the notice of injury may be given to the employer or to an employee of the employer who holds a supervisory or management position. The claimant reported her injury to FH within a week of her injury. She said that FH told her that "complaints" would go through him. She contends that notice of injury to FH was notice of injury to her employer, (employer). RL testified that FH is a customer of (employer) and that he is not an employee of (employer) nor does he hold a management or supervisory position with (employer). She further testified that FH has never been designated as an agent of (employer) to receive notices of injury on behalf of (employer) and that FH has not acted as a "liaison" for reporting injuries to (employer). She also testified that FH never reported to (employer) that the claimant reported an injury to him. The claimant testified that no one from (employer) ever told her that FH was an employee, supervisor, or manager of (employer). Under the particular facts of this case, we conclude that the hearing officer did not err in determining that the claimant did not give timely notice of injury to her employer within 30 days after the date of her injury, that his decision is supported by sufficient evidence, and that it is not so contrary to the overwhelming weight

of the evidence as to be clearly wrong and unjust. We cannot conclude, as requested by the claimant, that the fact that FH took papers to the claimant to sign in 1991 in order for the claimant to become an employee of (employer) makes FH an agent of (employer) as a matter of law for the purpose of receiving notice of injury on behalf of (employer). We previously determined in Appeal No. 950678, *supra*, that the claimant did not have good cause for failing to report her injury to her employer until June 30, 1994. We note that on June 24, 1991, the claimant signed a form stating that she had received and read (employer) procedures, and that those procedures state that (employer) has workers' compensation insurance and that the claimant is to notify (employer) if injured.

Pursuant to Sections 409.002 and 409.004, the carrier is relieved of liability due to the claimant's failure to timely notify her employer of her injury and due to her failure to timely file a claim for compensation. Consequently, any disability the claimant may have had from her work-related injury of _____, would not result in her receipt of workers' compensation benefits.

The hearing officer's decision and order on remand are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Elaine M. Chaney
Appeals Judge