

APPEAL NO. 960490

Following a contested case hearing (CCH) held in (city), Texas, on February 8, 1996, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer, (hearing officer), resolved the sole disputed issue by concluding that on (date of injury), the respondent (claimant) injured her neck in addition to her back in the course and scope of her employment with appellant (employer). Although the employer's workers' compensation carrier, (carrier), was the party opposing claimant at the CCH (where it was represented by (adjuster), an adjuster) and is the other party in the hearing officer's decision, the carrier has not appealed. The employer's appeal is, in essence, a challenge to the sufficiency of the evidence to support the hearing officer's determination of the disputed issue. The employer asserts that claimant's testimony was not sufficiently credible to support the decision, pointing to her failing to tell both the adjuster and her doctor that her neck was involved in her back injury. Claimant's response, which treats the appeal as if it were filed by the carrier, first asserts that the appeal was untimely and then asserts that the evidence sufficiently supports the decision.

DECISION

The hearing officer's decision has become final pursuant to Section 410.169 both because the employer was not a party to the CCH and because the appeal was not timely filed with the Texas Workers' Compensation Commission (Commission).

At the CCH, the carrier appeared, was represented, and presented evidence in opposition to claimant's contention that she injured her neck on (date of injury), in addition to her mid and low back. An employer's representative was also in attendance at the CCH, as is permitted by Section 409.011(b)(1). The carrier and the claimant stipulated at the hearing that at all times pertinent to this case, claimant was the employee of the employer and that the employer had workers' compensation insurance with the carrier. The carrier and claimant also stipulated that claimant had sustained injuries to her mid and low back. Section 409.011(b)(4) provides that an employer has the right to contest the compensability of an injury if the insurance carrier accepts liability for the payment of benefits. Not only did the hearing officer's decision give no indication that the carrier had accepted liability for payment of benefits for claimant's neck injury but in evidence was a Payment of Compensation or Notice of Refused or Disputed Claim (TWCC-21) dated July 19, 1995, from the claims administrative service disputing claimant's cervical complaints as unrelated to her (date of injury), and as not timely reported. We must reject the employer's appeal in this case, as we did in Texas Workers' Compensation Commission Appeal No. 92110, decided May 11, 1992, for the same reason we stated in that case, to wit: "Employer lacks standing to appeal because Employer did not become a party to the [CCH]."

Even were we to accept the employer's appeal on the assumption that it was intended to be the carrier's appeal, it was untimely using either the February 19, 1996, date the employer stated it received the hearing officer's decision or the February 20, 1996, date the carrier's representative received the decision. Section 410.202(a) provides a party with 15 days to appeal after receiving the hearing officer's decision. *And see* Tex. W.C.

Comm'n, 28 TEX. ADMIN. CODE § 143.3(a) (Rule 143.3(a)). Rule 143.3(c) provides that a request for review shall be presumed to be timely filed if it is: (1) mailed on or before the 15th day after the date of receipt of the hearing officer's decision, and (2) received by the Commission not later than the 20th day after the date of receipt of the hearing officer's decision. Rule 102.5(h) provides that, unless otherwise specified by rule, all notices and communications to insurance carriers will be sent to the carrier's Austin representative as provided by Rule 156.1. Rule 156.1(a) provides that each insurance carrier shall designate a person in Austin, Travis County, Texas, as its representative to the Commission, to act as agent for receiving notice from the Commission. *And see* TWCC Advisory 93-11, dated November 4, 1993.

According to the Commission's records, the hearing officer's decision was received by the carrier's Austin representative on the day it was distributed to the parties, namely, February 20, 1996, under a Commission cover letter dated February 16, 1996. Receipt by the carrier's Austin representative on February 20, 1996, is evidenced by a signature and date on a copy of the decision. Since under Rule 156.1(a) the carrier's Austin representative acts as the carrier's agent for receiving notices from the Commission, receipt of the hearing officer's decision by the carrier's Austin representative is receipt by the carrier. Thus, the carrier had 15 days from February 20, 1996, or until March 6, 1996, to file an appeal. The appeal was mailed on March 7, 1996, and thus was untimely.

Pursuant to Section 410.169, a decision of a hearing officer regarding benefits is final in the absence of a timely appeal. The hearing officer's decision and order have become final under Section 410.169.

Philip F. O'Neill
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Joe Sebesta
Appeals Judge