

APPEAL NO. 180777
FILED MAY 8, 2018

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 January 22, 2018, in (city), Texas, with (administrative law judge) presiding as the administrative law judge (ALJ). The ALJ resolved the disputed issue by deciding that an attorney's fee in the amount of \$100.00 was reasonable and necessary for services rendered from August 26 through September 11, 2017, and an attorney's fee in the amount of \$1,149.50 was not reasonable and necessary for services rendered from August 26 through September 11, 2017. The appellant (attorney) appealed the ALJ's determination that an attorney's fee in the amount of \$1,149.50 was not reasonable and necessary for services rendered from August 26 through September 11, 2017. The attorney argues, in part, that it was error for the ALJ to fail to address the issue of whether respondent 1 (claimant) timely disputed the Texas Department of Insurance, Division of Workers' Compensation (Division) Order for Attorney's Fees (Order). The appeal file does not contain a response from either the claimant or respondent 2 (carrier). That portion of the ALJ's determination that an attorney's fee in the amount of \$100.00 was reasonable and necessary for services rendered from August 26 through September 11, 2017, was not appealed and has become final pursuant to Section 410.169.

DECISION

Reversed and rendered as reformed.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury). In evidence is an Order approving attorney's fees in the amount of \$1,249.50 for services performed from August 26 through September 11, 2017. At the CCH, the attorney argued in both opening and closing arguments that the claimant failed to timely dispute the Order. Documentary evidence was admitted regarding the date of receipt of the Order by the claimant as well as the date the claimant disputed the Order. The attorney argues that the ALJ erred in failing to make findings regarding whether the claimant timely disputed the Order. We agree. A review of the record reflects that the parties actually litigated whether the claimant timely disputed the Order. The 1989 Act gives the Division the responsibility for approving attorney's fees and that in implementing a system to carry out that responsibility, the Division has set deadlines for filing a contest of an attorney's fee order. Appeals Panel Decision (APD) 990533, decided April 16, 1999, and APD 971769, decided October 14, 1997.

Prior to January 30, 2017, 28 TEX. ADMIN. CODE § 152.3(d) (Rule 152.3(d)) provided, in part, that except as provided in subsection (e), an attorney, claimant, or carrier who contests the fee fixed and approved by the Division shall request a CCH no later than the 15th day after receipt of the Division's order.

Rule 152.3(d) was amended effective January 30, 2017, to provide, in part, that to contest a Division order approving an application for attorney fees, an attorney, claimant, or insurance carrier must request a CCH no later than the 20th day after receipt of the Division's order.

Rule 102.5(d) provides, in pertinent part, that unless the great weight of the evidence indicates otherwise, the Division shall deem the received date of its written communications, including the attorney fee orders at issue, to be five days after the date mailed via United States Postal Service regular mail.

The Order approving the disputed attorney's fees is dated September 14, 2017. The ALJ failed to make any findings of fact regarding the date the claimant received the Order. Pursuant to Rule 102.5(d) the claimant was deemed to have received the Order five days after the date it was mailed. The evidence reflects that the Order was mailed on September 14, 2017, and therefore was deemed to have been received on Tuesday, September 19, 2017. The claimant contends that an envelope in evidence reflects that the Order was not mailed until October 19, 2017. However, the evidence reflects that the claimant requested an expedited CCH disputing attorney's fees awarded in the amount of \$1,249.50 on October 10, 2017, which is prior to the date the claimant is alleging the order was mailed to him. Accordingly, the great weight of the evidence does not indicate a date other than the deemed date of receipt pursuant to Rule 102.5(d), September 19, 2017. We note that Rule 102.3(b) provides that use of the term "day" rather than "working day" shall mean a calendar day; that Rule 152.3(d) states that the request for CCH must be submitted no later than the 20th day after receipt of the Division Order; and that the provisions of Rule 143.3(d) regarding not including Saturdays and Sundays and holidays listed in Section 662.003 of the Government Code applies to the computation of the time in which to file a request for appeal with the Appeals Panel, and not to a request for a CCH under Rule 152.3(d). The evidence reflects that the claimant requested an expedited CCH to dispute the attorney's fees awarded in the Order in the amount of \$1,249.50 on October 10, 2017. The 20th day after September 19, 2017, the deemed date of receipt, was Monday, October 9, 2017; thus, the request for an expedited CCH to dispute attorney's fees in the Order was filed late. Accordingly, we reverse that portion of the ALJ's decision that an attorney's fee in the amount of \$1,149.50 was not reasonable and necessary for services rendered from August 26 through September 11, 2017, and render a new decision that the Order was not timely disputed by the claimant and became final.

We note that the ALJ failed to include in the decision a separate paragraph stating the true corporate name of the insurance carrier and the name and address of its registered agent for service of process. See Section 410.164(c). Section 410.204(d) provides that each final decision of the Appeals Panel shall conclude with a separate paragraph stating the true corporate name of the insurance carrier and the name and address of its registered agent for service of process. We reform the ALJ's decision to include the true corporate name of the insurance carrier and the name and address of its registered agent for service of process in accordance with the applicable statute.

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

**RICHARD J. GERGASKO, PRESIDENT
6210 EAST HIGHWAY 290
AUSTIN, TEXAS 78723.**

Margaret L. Turner
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Carisa Space-Beam
Appeals Judge