

## APPEAL NO. 92709

This appeal arises under the Texas Workers' Compensation Act (1989 Act), TEX. REV. CIV. STAT. ANN. arts. 8308-1.01 *et seq.* A contested case hearing was held in (city), Texas, on September 3, 1992 to determine the claimant's impairment rating. The hearing officer, (hearing officer), adopted the seven percent impairment rating assigned by the designated doctor agreed to by the parties. The appellant (claimant herein) appeals this determination, contending that the designated doctor should not have reduced his impairment rating from 13 percent based on the assumption that his neck injury probably preexisted. The respondent (carrier herein) contends that claimant's request for review is untimely. The carrier also argues that the decision of the hearing officer should be affirmed due to claimant's failure to offer evidence sufficient to justify setting aside the findings of the mutually agreed upon physician.

### DECISION

Finding that the claimant's request for review was not timely, we hold that the hearing officer's decision and order has become final by operation of law.

The 1989 Act requires that a party that desires to appeal the decision of the hearing officer shall file a written appeal with the appeals panel not later than the 15th day after the date on which the decision of the hearing officer is received from the Division of Hearings. Article 8308-6.41(a). The decision of the hearing officer is final in the absence of a timely appeal by a party. Article 8308-6.34(h).

The record in this case shows that the hearing officer's decision was distributed on November 4, 1992. Rules of the Texas Workers' Compensation Commission, Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(h) (Rule 102.5(h)) provide that for purposes of determining the date of receipt for those notices and other written communications which require action by a date specific after receipt, the Commission shall deem the received date to be five days after the date mailed. In addition, Rule 143.3(c) provides that a request for review of the decision of the hearing officer shall be presumed to be timely filed if it is mailed on or before the 15th day after the date of receipt of the hearing officer's decision, and received by the Commission or other party not later than the 20th day after the date of receipt of the hearing officer's decision. We observe that the record in the case below shows that the hearing officer, at the conclusion of the hearing, advised both parties of the statutory requirements for appeal of his order.

The claimant's request for review, which was dated December 20, 1992, was postmarked December 23, 1992, and was stamped as received by the Commission on December 30. Applying the statute and the rules to the circumstances, claimant's request for review was untimely.

We accordingly hold that the decision and order of the hearing officer has become final by operation of law.

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Lynda H. Nesenholtz  
Appeals Judge

CONCUR:

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Robert W. Potts  
Appeals Judge

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Susan M. Kelley  
Appeals Judge