APPEAL NO. 931093

On October 18, 1993, a contested case hearing was held in (city) Texas, with (hearing officer) presiding as the hearing officer. The hearing was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act) (formerly V.A.C.S. Article 8308-1.01 *et seq*.). The issues at the hearing were whether the appellant (claimant herein) had sustained a compensable injury on (date of injury), in the course and scope of her employment with the (school herein), a statutory self-insured governmental entity, and whether the claimant had any disability as a result of that injury. The hearing officer found against the claimant on both issues, and claimant appeals.

DECISION

Determining that the claimant's appeal was not timely filed and that the jurisdiction of the Appeals Panel has not been properly invoked, the decision of the hearing officer has become final pursuant to Section 410.169.

Records of the Texas Workers' Compensation Commission (Commission) show that the hearing officer's decision was distributed to all parties on November 5, 1993, with a cover letter of November 4, 1993. Therefore, pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(h) (Rule 102.5(h)), the claimant is deemed to have received the decision five days after it was mailed, that is, on November 10, 1993.

Section 410.202(a) provides that:

> [t]o appeal the decision of a hearing officer, a party shall file a written request for 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 and shall on the same date serve a copy of the request for appeal on the other party.

*See also* Rule 143.3(a)(3). The hearing officer advised the parties of the 15-day period for filing an appeal. Rule 143.3(c) provides that a request for review 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 is received by the Commission not later than the 20th day after the date of receipt of the hearing officer's decision.

The 15th day after the date the claimant received the decision was Thanksgiving Day, November 25, 1993, a national holiday and the start of a four day weekend during which Commission offices were closed. Therefore, under Rule 102.3(a)(3), the filing period for the claimant's appeal was extended to Monday, November 29, 1993. The claimant's appeal was postmarked December 3, 1993. Pursuant to Section 410.169, a decision of a hearing officer regarding benefits is final in the absence of a timely appeal. Consequently, the decision of the hearing officer in this case has become final.

Although not necessary to our decision, we have nonetheless examined the record

in this case to determine whether there was sufficient evidence to support the hearing officer's decision. *See* Texas Workers' Compensation Commission Appeal No. 92080, decided April 14, 1992. The claimant has the burden of establishing by a preponderance of the evidence that a compensable injury occurred. Martinez v. Travelers' Insurance Company, 543 S.W.2d 911 (Tex. Civ. App.-Waco 1976, no writ). This is ordinarily a question of fact to be determined by the hearing officer based on his or her evaluation of the evidence. *See* Texas Workers' Compensation Commission Appeal No. 93449, decided July 21, 1993. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165)(a)), including medical evidence, and is entitled to believe all or part or none of the testimony of any witness. In reviewing the sufficiency of the evidence to support a finding of the hearing officer, we reverse only if we determine that the evidence is so weak or the finding so against the great weight and preponderance of he evidence as to be manifestly erroneous and unjust. In Re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

In this case, the evidence established that the claimant suffered from carpal tunnel syndrome and ulnar nerve entrapment at the left elbow. The claimant testified that she worked at two jobs. In her opinion, she sustained these injuries on (date of injury), as a result of lifting a 50 pound box of detergent when working for the school. Her other job required no heavy lifting and involved dispensing drinks at a concession stand. She stated that she last worked at this job on February 2 or 3, 1993. A report of (Dr. T), a medical examination order doctor, contains the opinion that the injuries claimed were not sustained on (date of injury). The hearing officer found from the evidence presented that there was no causal relationship between claimant's injuries and her employment with the school. Hence, she had no disability pertaining to this employment. Having reviewed the record, even were we to have considered claimant's appeal, we would have concluded that the hearing officer's findings and conclusions are not so against the great weight of the evidence as to be clearly wrong and manifestly unjust. *See* Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986).

Since the claimant's appeal was untimely, the jurisdiction of the Appeals Panel was not properly invoked. Pursuant to Section 410.169 and Rule 142.16(f), the decision of the hearing officer has become final.

Gary L. Kilgore
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Lynda H. Nesenholtz
Appeals Judge