

APPEAL NO. 931109

Pursuant to 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.*), a contested case hearing was held in (city), Texas, (hearing officer) presiding as hearing officer. She determined that the appellant (claimant) did not sustain a compensable injury (alleged work related hypertension) on (date of injury), in the course and scope of his employment and that consequently no period of disability was established. In a notice of appeal dated and mailed on December 9, 1993, the claimant urges that he received an injury in the course and scope of his employment and that he had disability.

DECISION

Determining that the request for review by the Appeals Panel has not been timely filed and the jurisdiction of the Appeals Panel has not been properly invoked, the hearing officer's decision in this case is final pursuant to the provisions of Section 410.169.

The decision in this case was mailed to the parties on September 28, 1993. Under the provisions of Texas Workers' Compensation Commission (Commission) Rule 102.5(h) (Tex. W. C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(h)), "[f]or 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." Accordingly, claimant is deemed to have received the decision on October 3, 1993.

Section 410.202(a) provides that a party desiring to appeal the decision of the hearing officer must do so not later than 15 days after receiving the decision. We also note that the parties were advised at the end of the contested case hearing of the 15 day requirement to request review of the decision. The deadline for filing the request for review in this case would have been October 19, 1993. The earliest date on any document or post marked envelope in this case relating to an appeal or request for review is December 9, 1993. This is well beyond the statutory time for such filing resulting in the failure to invoke our jurisdiction and the finality of the hearing officer's decision.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Philip F. O'Neill
Appeals Judge