

## APPEAL NO. 931137

At a contested case hearing held in (city), Texas, on November 2, 1993, the hearing officer, (hearing officer), determined that the appellant (claimant) was injured in the course and scope of her employment as a packer for a moving company on (date of injury), when she was hit in the back of her head and neck by a box full of books. However, the hearing officer further determined that the claimant did not timely report the injury to her employer nor did good cause exist for her failure to timely report the injury. Claimant's appeal challenges the sufficiency of the evidence to support the hearing officer's adverse determination of the timely notice of injury issue and asks the Appeals Panel to reverse and render a decision for the claimant. The respondent (carrier) asserts the sufficiency of the evidence to support the challenged determination and requests affirmance.

### DECISION

Determining that claimant's request for review 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 the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 410.169 (1989 Act) (formerly, V.A.C.S., Article 8308-6.34(h)).

The 1989 Act, Section 410.202(a), provides, in part, that a party desiring to appeal the decision of the hearing officer shall file a written request for review with the Texas Workers' Compensation Commission (Commission) Appeals Panel not later than the 15th day after the date the hearing officer's decision is received from the Commission's hearings division. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(a)(3) (Rule 143.3(a)(3)) provides that a request for review be filed with the Commission's central office in Austin not later than the 15th day after the date of receipt of the hearing officer's decision. Rule 143.3(c) provides that a request 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 no later than the 20th day after such date. The Commission's records indicate that the hearing officer's decision was distributed to the parties by the Commission's hearings division on November 19, 1993. Rule 102.5(h) provides as follows: "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." Applying that rule to this case, the date claimant is deemed to have received the hearing officer's decision is five days after November 19th, that is, on November 24, 1993, and her request for review, to have been timely filed, must have been mailed not later than 15 days after November 24th, that is, by December 9, 1993, and must have been received by the Commission not later than 20 days after November 24th, that is, by December 14, 1993. Claimant's request for review bore a postmark date of December 15, 1993, and it was received at the Commission's central office in Austin on December 21, 1993.

The Appeals Panel has applied Rule 102.5(h) to determine the date of receipt of the hearing officer's decision when appellants have not stated the actual receipt date in the request for review. In this case, claimant did not state the date she received the hearing

officer's decision from the Commission's hearings division but rather stated the following:

COME NOW, [attorneys] for [claimant] (appellant) and files (sic) their response to [carrier's] appeal to overturn the decision of the Contested Case Hearing Officer. This appeal was received by the appellant on December 3, 1993.

The Appeals Panel has no record of having received an appeal from the carrier in this case and we do not regard the above as stating the date the claimant received the hearing officer's decision from the Commission. Accordingly, we apply Rule 102.5(h) and determine that claimant's request for review was not timely filed.

Notwithstanding that we do not decide this appeal, we have reviewed the evidence and were we to decide the appeal we would nonetheless be satisfied that the hearing officer's determination that claimant did not timely report her injury to her employer was not against the great weight and preponderance of the evidence (In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951)). Claimant testified that on (date of injury), a Friday, her trainer and team chief, (Ms. A), was working at the same location with her packing boxes for a move but that she said nothing about her injury to Ms. A until the following Monday, and that when she did tell Ms. A that her arm and neck were hurting from a pinched nerve, she did not explain how it happened or otherwise state or indicate she had a job related injury. In her earlier interview claimant indicated that she and Ms. A had been packing boxes in different rooms of the residence. Claimant also testified she did not tell her supervisor, (Mr. S), or anyone else with the employer that she had a work-related injury before filing her notice of injury on December 15, 1992. Ms. A testified that when she asked claimant about an arm brace she was wearing, apparently sometime after (date of injury), claimant discussed having a pinched nerve condition but said it had nothing to do with the job. (Mr. M), employer's general manager, testified that claimant never reported a work-related injury to him or insofar as he knew to anyone else with employer, and that he first learned of her contention in January 1993. In his sworn statement, Mr. S indicated he was unaware of claimant's having been injured as she described and that she reported no such injury to him.

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

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Philip F. O'Neill  
Appeals Judge

CONCUR:

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Lynda H. Nesenholtz  
Appeals Judge

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Gary L. Kilgore  
Appeals Judge