

APPEAL NO. 931171

This appeal arises under 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.*). On October 19, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. She determined that appellant's (claimant) psychological condition was not caused by his compensable arm injury, that he had reached maximum medical improvement (MMI) on December 12, 1992, with zero percent impairment, and that he has had no disability from his compensable injury. Claimant asserts that certain medical evidence ties his psychological problem to the injury to his arm and disputes medical evidence that indicates no causation and MMI. The carrier asserts that the appeal was untimely.

DECISION

Finding that the appeal was untimely filed, the decision of the hearing officer is final.

The decision of the hearing officer was dated November 10, 1993, and was distributed to the parties on November 12, 1993. Tex. W. C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(h) (Rule 102.5(h)) provides:

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.

With a distribution date of November 12th, the deemed date of receipt was five days later on November 17, 1993. Since Section 410.202 requires a party to file a written request for review "not later than the 15th day after the date on which the decision of the hearing officer is received, . . ." the last day on which an appeal could be filed was December 2, 1993. The provisions of Rule 143.3(c), which allow the Texas Workers' Compensation Commission (Commission) to receive an appeal not later than 20 days after the appellant received the hearing officer's decision, are conditioned on a mailing of the appeal no later than the 15th day after receiving the decision. In this case, there is no envelope with the appeal, and there is no other evidence of a mailing of the appeal. The appeal does contain information across the top of each page indicating that it was sent by FAX. The commission has three copies of appeals from claimant with the earliest date of transmission by FAX indicating December 13, 1993. The appeal itself is consistent with that date in certifying that a copy was served on the carrier by FAX on December 13, 1993. Since the appeal was not put into the mail no later than 15 days after receipt, the 20 day provision does not apply; had it applied, it would require receipt of the appeal no later than December 7, 1993. As stated, the earliest date that can be attributed to claimant's appeal is December 13, 1993: clearly too late to be a timely appeal. We note the record indicates at the end of the hearing the hearing officer instructed the parties that an appeal must be filed within 15 days of the date the decision was received.

While the decision of the hearing officer is final in this case, the decision would have been affirmed had there been a valid appeal.

The controlling issue was whether claimant's injury to his arm from an abrupt twisting movement of a frozen hand drill caused a psychological problem in claimant. Medical evidence was varied. In support of the hearing officer's decision, (Dr. Y), an orthopedist, on December 9, 1992, found MMI with zero percent impairment. The designated doctor, (Dr. J), stated that claimant reached MMI on August 21, 1993, with a zero percent impairment rating. (Dr. J is also an orthopedist who stated that he could not address "psychiatric difficulties.") He added that claimant had "long since" had time to reach MMI. The psychologist, (Dr. T), the Commission appointed to perform a psychological assessment, indicated that the arm injury of (date of injury), did not cause the claimant's personality disorder. (Dr. Jo), a psychiatrist, stated in May 1993, that claimant's personality disorder was neither "caused or amplified" by his injury.

The hearing officer's decision that claimant's psychological problem was not caused by the arm injury of (date of injury), was sufficiently supported by the evidence of Dr. T and Dr. Jo. With her determination that the arm injury caused no psychological problem, the hearing officer chose to apply the MMI date of the orthopedist, Dr. Y, who predated Dr. J in finding MMI. While the claimant provided medical evidence that connected the injury to the psychological disorder and indicated more treatment was needed, the hearing officer's findings that the injury did not cause the psychological problem and that MMI had been reached were not against the great weight and preponderance of the evidence.

The decision and order of the hearing officer are the final administrative action in this case. See Section 410.169.

Joe Sebesta
Appeals Judge

CONCUR:

Lynda H. Neseholtz
Appeals Judge

Gary L. Kilgore
Appeals Judge