APPEAL NO. 93625

This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act), TEX. LAB. CODE ANN. §401.001 *et seq.* On May 6, 1993, and June 21, 1993, a hearing was held in (city), Texas, with (hearing officer) presiding. He determined that appellant (claimant) reached maximum medical improvement (MMI) on April 16, 1993, from her back injury incurred on (date of injury). He also found zero percent impairment and that claimant had no disability since September 2, 1992. Claimant states on appeal that her treating doctor does not agree with the designated doctor, she has pain, and that her doctor prescribed retraining through the Texas Rehabilitation Commission. Respondent (carrier) replies that claimant's appeal is not within the statutory time so this panel has no jurisdiction to hear the case and that the evidence is sufficient to uphold the hearing officer's decision.

DECISION

Finding that the appeal in this case was not timely made, the decision of the hearing officer is the final administrative decision. *See* Sections 410.169 and 410.202 of the 1989 Act.

I

The decision of the hearing officer in this case was distributed to the parties on July 1, 1993. The Texas Workers' Compensation Commission (commission) has addressed date of receipt of decisions through adoption of Tex. W. C. Comm'n, 28 Tex. Admin. Code § 102.5(h) (rule 102.5(h)), which says, "the commission shall deem the received date to be five days after the date mailed." The deemed date of receipt would be July 6, 1993. Section 410.202 of the 1989 Act then provides that an appeal be filed with the appeals panel not later than the 15th day after the date of receipt of the decision. The 15th day in this case would have been July 21, 1993. Then rule 145.3(c) provides a period of time for an appeal to reach the commission through the mail if the appeal was mailed on or before the 15th day. Had claimant's appeal been mailed no later than July 21, 1993, rule 145.3(c) would allow it to be received by the commission not later than the 20th day after the appealing party received the decision. Claimant's appeal is postmarked July 22, 1993; although received on July 26, 1993, her appeal was not filed within the statutory time period. The decision of the hearing officer is therefore final. *See* Section 410.169 of the 1989 Act.

II

Even though the appeals panel has no basis for review without a timely appeal, the facts of the record show that if a timely appeal had been made, the hearing officer's decision would still have been affirmed.

Claimant stated that she hurt her back lifting a large container of wet donut dough with another worker on (date of injury), while working (employer). Claimant was seen by several different doctors, including (Dr. S) her family doctor, (Dr. M), and (Dr. Sh), who treated her for a period of time and reported that she could return to work on September 1, 1992. She saw (Dr. L) at the request of the carrier and (Dr. R), as the designated doctor.

Dr. R did not think she reached MMI; claimant then decided to change treating doctors from Dr. Sh to Dr. R, and this was accomplished. Thereafter, the commission named Dr. Ponder (Dr. P) to be the designated doctor since Dr. R had become the treating doctor. (There was no issue about the change in designated doctor.) The issues at hearing were whether MMI had been reached, what was the impairment rating, and for what period did claimant have disability.

There were no medical tests introduced at the hearing that show claimant had any objective signs of impairment. MRI's of the lumbar and cervical spinal areas were normal. Nerve conduction studies and EMG were normal also. Dr. L found MMI with zero percent impairment on July 22, 1992. As stated, Dr. Sh reported that claimant could return to work on September 1, 1992. Dr. R at one point anticipated that MMI would be reached in January 1993 (but he did not find that MMI had been reached when January, 1993 arrived). Dr. P examined claimant and found MMI on April 16, 1993, with zero percent impairment; he described her problem as a lumbar and cervical sprain - the same diagnosis as made by Dr. M in January, 1992. While Dr. R notes that more testing should be done of claimant, each test that has been done shows no abnormality stemming from the injury. Claimant testified that in some ways her pain has gotten worse and that she cannot work.

The evidence sufficiently supports the hearing officer's finding that claimant did not have disability after September 1, 1992. The evidence also sufficiently supports the hearing officer in giving presumptive weight to Dr. P's report (as designated doctor) since the great weight of other medical evidence is not contrary to it. *See* Sections 408.122 and 408.125 of the 1989 Act.

Had an appeal been timely made, the record indicates that the Appeals Panel would have affirmed the decision of the hearing officer.

The decision of the hearing officer is final since no timely appeal was made. *See* Sections 410.169 and 410.202 of the 1989 Act.

Joe Sebesta
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Philip F. O'Neill
Appeals Judge