

APPEAL NO. 93728

Pursuant to our remand in this case, Texas Workers' Compensation Commission Appeal No. 92483, decided October 26, 1992, a hearing on remand was held on March 12, 1993, and June 18, 1993, in (city), Texas, (hearing officer) presiding as hearing officer. We remanded the case because of concern with the state of the medical evidence at the original hearing and the possible misapplication of law. In any event, the hearing officer stated the issue on remand to be whether there is a causal connection between the claimant's employment and his hernias, and determined that there was no causal connection. Accordingly, benefits 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.*) were again denied. Little new evidence was introduced in the hearing on remand. The decision of the hearing was mailed to the claimant on July 27, 1993, and his request for review was received by the Commission on August 19, 1993, in an envelope postmarked August 18, 1993. The respondent, Texas Workers' Compensation Insurance Fund asserts that the claimant was not timely in his request for review.

DECISION

Finding that claimant's request for review was not timely filed, our jurisdiction is not properly invoked and the hearing officer's decision is affirmed by operation of law.

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 appeal with the Appeals Panel not later than the 15th day after the date the hearing officer's decision is received from the Texas Workers' Compensation Commission's hearings division. A request for review is considered timely filed if mailed on or before the 15th day. Tex. W. C. Comm'n, 28 TEX. ADMIN. CODE § 143.3 (TWCC Rule 143.3). Under the provisions of TWCC Rule 102.5(h) the Commission "shall deem the received date to be five days after the date mailed." There is nothing to suggest that the claimant did not receive the decision within the time frame provided by this rule. Accordingly, the latest date that the claimant could mail his request for review and have it considered timely was August 17, 1993. The envelope in which his request for review was sent is postmarked August 18, 1993. The request for review is therefore untimely resulting in our jurisdiction not being invoked. The hearing officer's decision has become final. Section 410.169 and Rule 142.16(f); Texas Workers' Compensation Commission Appeal No. 92080, decided April 14, 1992; Texas Workers' Compensation Commission Appeal No.93746, decided September 29, 1993.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Susan M. Kelley
Appeals Judge