

APPEAL NO. 93737

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held in (city), Texas on July 8, 1993, to decide four disputed issues. The appellant, who is the carrier in this action, appeals hearing officer (hearing officer) determination that respondent (claimant) suffered an injury in the course and scope of his employment and that the claimant had disability, contending that there was insufficient or no evidence to support such findings. The claimant responds that carrier's request for review is untimely; in the alternative, he contends that the hearing officer's decision should be affirmed.

DECISION

Finding that the request for review was not timely filed and the jurisdiction of the Appeals Panel has not been properly invoked, the decision of the hearing officer has become final pursuant to the provisions of Sections 410.169 and 410.202, and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3 (Rule 143.3).

Section 410.202 provides that a party desiring to appeal the decision of the hearing officer shall file a written appeal with the Appeals Panel and serve a copy on the other party not later than the 15th day after the date the hearing officer's decision is received from the Texas Workers' Compensation Commission's (Commission) hearings division. Rule 143.3(a) provides that a request for review be filed with the Commission's central office in (city) not later than the 15th day after 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 not later than the 20th day after such date.

The hearing officer's decision in this case, signed on July 16, 1993, was distributed by the Commission's hearings division on July 27th. The carrier, while stating that it "files this timely review in accordance with the Texas Workers' Compensation Act," nevertheless does not indicate the date on which the decision was received and thus we apply Rule 102.5(h) which provides that "the Commission shall deem the received date to be five days after the date mailed." Accordingly, and in the absence of any evidence to the contrary, the carrier is deemed to have received the decision on or before August 1st, and its appeal was required to be filed with the Appeals Panel not later than 15 days afterwards, or August 16th. See Texas Workers' Compensation Commission Appeal No. 93686, decided September 21, 1993. The appeal, dated August 18, 1993, was not postmarked but was date-stamped as received by the Commission on August 20th. It is thus untimely and consequently the jurisdiction of the Appeals Panel is not invoked.

For the foregoing reasons, the decision of the hearing officer is the final administrative decision in this case.

Lynda H. Neseholtz
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge