

APPEAL NO. 93746

In Texas Workers' Compensation Commission Appeal No. 93286, decided May 28, 1993, this case was remanded to the hearing officer for further development of the evidence concerning the impairment rating assigned to the appellant (claimant). In the earlier decision, we noted that the carrier's doctor determined that the claimant reached maximum medical improvement (MMI) on February 13, 1992, with zero percent whole body impairment for his (date of injury), back injury, that the designated doctor determined that claimant reached MMI on April 22, 1992, with nine percent impairment, and that the claimant's treating doctor determined that claimant reached MMI on October 30, 1992, with 14% impairment. We affirmed the hearing officer's determination that claimant reached MMI on April 22, 1992, a determination made by giving presumptive weight to the designated doctor's report pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 408.122(b). However, because the evidence showed that the designated doctor, in the course of his examination of claimant, failed to conduct range of motion (ROM) measurements consistent with the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (see Section 408.124, 1989 Act), we remanded for additional evidence, consideration, and findings on the correct impairment rating.

The hearing officer,(hearing officer), conducted a hearing upon remand in (city), Texas, on July 5, 1993, and concluded that claimant's whole body impairment rating was 13% as determined by the designated doctor who re-examined claimant and added loss of ROM impairment to the prior whole body impairment rating. The hearing officer commented in his statement of the evidence at the remand hearing that claimant's treating doctor testified that he did not feel claimant "would argue over the one percent (1%) difference between his rating [14%] and [the designated doctor's]." The hearing officer went on to state: "This was confirmed by CLAIMANT." Nonetheless, in his admittedly untimely request for review claimant appears to dispute not only the 13% impairment rating of the designated doctor but also the designated doctor's earlier MMI date of April 23, 1992, which was not an issue on remand having been affirmed in the earlier Appeals Panel decision. Claimant does not assert that the designated doctor's redetermined impairment rating of 13% was against the great weight of the other medical evidence. See Section 408.125(e) (1989 Act). Indeed, his appeal is patently groundless. In its response, the carrier urges the rejection of claimant's untimely appeal and the affirmance of the 13% impairment rating.

DECISION

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

Our reasoning in this case is the same as was discussed in Texas Workers' Compensation Commission Appeal No. 92080, decided April 14, 1992. 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 (Commission) 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 not later than the 20th day after such date. The hearing officer's decision in this case, signed on July 15, 1993, was distributed by the Commission's hearings division on July 23, 1993. Claimant does not indicate the date he received the decision and thus we apply Rule 102.5(h) which provides, in part, that "the commission shall deem the received date to be five days after the date mailed." Accordingly, claimant is deemed to have received the decision on July 28, 1993, and his appeal was required to be filed with the Appeals Panel not later than 15 days thereafter, that is, on August 12, 1993. Claimant's request for review, correctly addressed, was dated August 18, 1993, bore the postmark date of August 19, 1993, and was received by the Commission on August 24, 1993.

Since claimant's request for review was not mailed until August 19, 1993, his appeal was untimely and, consequently, the jurisdiction of the Appeals Panel was not properly invoked. Pursuant to Section 410.169 and Rule 142.16(f), the decision of the hearing officer has become final.

Philip F. O'Neill
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Gary L. Kilgore
Appeals Judge