

APPEAL NO. 93765

On February 8, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding as the hearing officer. The hearing was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). The issue at the hearing concerned whether the appellant (claimant) had reached maximum medical improvement (MMI) with a three percent impairment rating as certified by his treating physician on June 5, 1992. In his decision signed on February 16, 1993, the hearing officer determined that claimant had actual notice of the impairment rating no later than June 25, 1992, that claimant first disputed the impairment rating through the Texas Workers' Compensation Commission (Commission) on October 21, 1992, that such dispute was not timely, and that claimant reached MMI on June 5, 1992, with a three percent impairment rating. The claimant has appealed the hearing officer's decision. No response was filed by the respondent (carrier).

DECISION

Determining that claimant did not timely file a request for review of the hearing officer's decision, we hold that the hearing officer's decision has become final pursuant to Section 410.169 of the 1989 Act.

Section 410.202(a) provides that "[t]o appeal the decision of a hearing officer, a party shall file a written request for appeal with the appeals panel not later than the 15th day after the date on which the decision of the hearing officer is received from the division and shall on the same date serve a copy of the request for appeal on the other party." See *also* Tex. W. C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(a) (Rule 143.3). The hearing officer's decision was distributed to the parties on February 22, 1993. Rule 102.5(h) provides that "[f]or 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."

Notwithstanding the provisions of Rule 102.5(h), in previous decisions we have counted the 15 day appeal period from the date a party received the hearing officer's decision as stated in the party's appeal. See Texas Workers' Compensation Commission Appeal No. 91124, decided February 12, 1992; Texas Workers' Compensation Commission Appeal No. 92016, decided February 28, 1992; and Texas Workers' Compensation Commission Appeal No. 92099, decided May 21, 1992. However, when a claimant has not stated in the appeal the date the decision was received, we have applied the deemed received date provision in Rule 102.5(h) in determining whether the appeal was timely filed. See Texas Workers' Compensation Commission Appeal No. 92036, decided March 11, 1992; Texas Workers' Compensation Commission Appeal No. 92080, decided April 14, 1992; Texas Workers' Compensation Commission Appeal No. 92223, decided July 13, 1992; and Texas Workers' Compensation Commission Appeal No. 93686, decided September 21, 1993.

Since the claimant did not state in his appeal the date he actually received the hearing officer's decision, we apply Rule 102.5(h) to determine whether the appeal was timely. Since the decision was distributed on February 22, 1993, the deemed date of receipt under Rule 102.5(h) was February 27, 1993. Consequently, the filing deadline for the appeal was 15 days after February 27th, that is, March 14, 1993. The claimant's appeal is not dated, but was postmarked on August 27, 1993, and received by the Commission on August 30, 1993.

Since claimant's appeal of the hearing officer's decision was not timely filed, it became final by operation of law. See Section 410.169; Rule 142.16(f).

Philip F. O'Neill
Appeals Judge

CONCUR:

Lynda H. Nesenholtz
Appeals Judge

Gary L. Kilgore
Appeals Judge