

APPEAL NO. 93773

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On May 19, 1993, a contested case hearing (CCH) was held in (city), Texas, with (hearing officer) presiding as hearing officer. The issues to be decided were:

- a. Whether Claimant sustained a compensable injury on (date of injury); and
- b. Whether Claimant had disability from (date of injury), to the present.

The hearing officer determined that the appellant, claimant herein, did not sustain an injury to his lungs, skin or any other parts of his body in the course and scope of his employment on (date of injury).

By correspondence dated August 25, 1993, one (Mr. M), a friend of claimant's, wrote the Texas Workers' Compensation Commission (Commission) stating "[t]o my knowledge [claimant] is still injured. He has found an attorney who is willing to appeal the matter. His lawyer and him will be waiting for an answer." Respondent, carrier herein, responds that the Request for Review was not timely filed, and in the alternative that the hearing officer's decision is supported by the evidence and requests, we affirm the decision.

DECISION

Upon review of the record we find that the appeal in this matter was not timely filed within the time limits required by Section 410.202 and that the decision of the hearing officer is the final administrative decision in this case. See Section 410.169.

The decision of the hearing officer was distributed on May 28, 1993. Mr. M in his letter does not assert when the decision was received, therefore, the provisions of Commission Rule 102.5(h) (Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(h)) are invoked. Rule 102.5(h) provides:

- (h) For 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.

In that the decision was distributed on May 28, 1993, the "deemed" date of receipt is June 2, 1993. Section 410.202 requires that an appeal shall be filed with the Appeals Panel "not later than the 15th day after the date on which the decision of the hearing officer is received. . . ." Since the deemed receipt date is June 2, 1993, 15 days from that date was Thursday, June 17, 1993, which would be the statutory date by which an appeal must have been filed. Mr. M's letter was dated August 25, 1993 and postmarked August 26, 1993. The letter was actually received by the Texas Workers' Compensation Commission's central office in Austin on August 30, 1993. Consequently, the letter was filed well beyond the

statutory 15 days accorded in Section 410.202, using the August 26, 1993, date of mailing pursuant to Rule 143.3(c)(1).

Section 410.169 states the decision of the hearing officer is final in the absence of a timely appeal. Determining the appeal was not timely filed, as set forth above, we have no jurisdiction to review the hearing officer's decision.

Determining an appeal was not timely filed, as set forth above, we have no jurisdiction to review the hearing officer's decision and that decision is final.

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Philip F. O'Neill  
Appeals Judge