

## APPEAL NO. 93804

This appeal arises under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act) (formerly TEX. REV. CIV. STAT. ANN. Art 8308-1.01 *et seq.* (Vernon Supp. 1993)). On June 14, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. In his decision signed on June 25, 1993, the hearing officer decided that the claimant, JF, had not reached maximum medical improvement (MMI). In an appeal dated September 10, 1993, the appellant, Transportation Insurance Co. (carrier), requested a review of the hearing officer's decision on whether the claimant had reached MMI. No response was filed by the respondent (claimant).

### DECISION

Determining that the carrier 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 provides that "[t]o appeal the decision of the 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 § 102.5(b), 143.3(a), and 156.1(a) (Rules 102.5(b), 143.3(a), and 156.1(a)). Rule 102.5(b) provides that "[u]nless otherwise specified by rule, all notices and communications to insurance carriers will be sent to the carrier's (city) representative as provided [in Rule] 156.1 of the [Rules]." Rule 156.1(a) requires each insurance carrier to designate a person in (city) (County), Texas, to act as the carrier's representative for the purpose of receiving notices from the Commission. Rule 156.1(c) defines that notice to the carrier's designated representative's (city) address is notice to the carrier from the Commission. In Texas Workers' Compensation Commission (Commission) Advisory 92-07 dated November 3, 1992, the Commission advised all carriers that effective November 30, 1992, all documents and notices would be placed in the box of the carrier's (city) representative, and that "[n]o additional copies of such documents will be mailed to Carrier's Representatives who have attended such proceedings." Commission records reflect compliance with these rules. The hearing officer's decision was distributed by the Commission to the parties on July 22, 1993. Rule 102.5(h) provides that 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.

Notwithstanding the provisions of Rule 102.5(h), in previous decisions we have counted the 15 day appeal limitation 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, if probative evidence

shows that a date, other than the actual date alleged by a party, is the date a party received the decision, then we will follow the probative evidence. Texas Workers' Compensation Commission Appeal No. 93146, decided April 8, 1993; Texas Workers' Compensation Commission Appeal No. 93327, decided June 3, 1993. The Commission records show that the Commission distributed the decision to the box of the carrier's Commission representative on July 12, 1993, and this constitutes probative evidence that the carrier's (city) representative did receive the decision. This is probative evidence, even if the carrier's attorney argues that the carrier did not receive the decision until August 27, 1993, because of a delay from the postal service in getting it to the carrier. Perhaps, this could mean a delay in the mail from the carrier's Commission representative did not reach the carrier's other offices. Even if the carrier's Commission representative failed to obtain the decision from its box until too late, this failure alone would not constitute a reason to extend the carrier's time to file an appeal. Texas Workers' Compensation Commission Appeal No. 93327, decided June 3, 1993. The carrier does not dispute the distribution date to the carrier's Commission box. When a party does not state the actual date a decision of the hearing officer 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. We take notice that the cover letter which accompanied the decision to the carrier's (city) representative was properly marked. See Texas Workers' Compensation Commission Appeal No. 93519, decided July 28, 1993. No reason has been given to conclude that the decision was misdirected, and nothing indicates that the Commission did not follow the ordinary system of placing a copy in the representative's box. Id.

In the instant case, the carrier did not state in his appeal the date which the carrier's Commission representative actually received the hearing officer's decision. In accordance with our previous decisions applying Rule 102.5(h) where the date of receipt is not accurately and specifically set forth in the appeal, we apply the deemed receipt rule to the claimant's appeal in determining whether the appeal was timely. See Texas Workers' Compensation Commission Appeal No. 93519, decided July 28, 1993. Since the Commission distributed the decision on July 12, 1993, the deemed date of receipt under Rule 102.5(h) and Rule 102.3(a)(1 & 3) is July 17, 1993. Consequently, the filing deadline for the appeal was 15 days after July 17, 1993, which date was August 1, 1993. The carrier's appeal is dated September 10, 1993, and was postmarked on September 10, 1993, and stamped received by the Commission on September 13, 1993. The carrier's appeal of the hearing officer's decision was not timely filed. Therefore, the hearing officer's decision became final under the provisions of Section 410.169. See *a/so* Rule 142.16(f).

Because the claimant did not timely request an appeal, the decision of the hearing

officer is final pursuant to Section 410.169.

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Robert W. Potts  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Lynda H. Nesenholtz  
Appeals Judge