

APPEAL NO. 93823

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). At a contested case hearing held in (city), Texas, on July 22, 1993, the hearing officer, (hearing officer), determined that the respondent (claimant) sustained a compensable back injury on (date of injury), while in the employ of (employer), that he timely reported such injury to his employer, and that he had disability from November 19, 1992, to the date of the hearing. In its request for review the appellant (carrier) challenges the hearing officer's decision on the sole basis that the claimant's testimony was not credible. No response was filed by the claimant.

DECISION

Finding that the carrier'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 August 16, 1993, was distributed by the Commission's hearings division on August 23, 1993. The carrier does not indicate the date it 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, the carrier is deemed to have received the decision on August 28, 1993. Since 15 days from that date, September 12, 1993, fell on a Sunday, Rule 102.3(a)(3) extended the filing deadline to Monday, September 13th. The carrier's request for review was dated September 14, 1993, and bore a postmark of that date.

Since the carrier's request for review was not mailed until September 14, 1993, it 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.

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Philip F. O'Neill  
Appeals Judge

CONCUR:

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Stark O. Sanders, Jr.  
Chief Appeals Judge

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Susan M. Kelley  
Appeals Judge