

APPEAL NO. 93879

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act) (formerly V.A.C.S., Article 8308-1.01 *et seq.*). On August 24, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding as hearing officer. The issues to be decided at the hearing were:

- a.has the Claimant reached maximum medical improvement (MMI); and
- b.if so, on what date; and,
- c.if the Claimant has reached maximum medical improvement, did the claimant timely dispute the findings of maximum medical improvement and impairment rating.

The hearing officer determined that the claimant's treating doctor's finding of MMI was invalid, that claimant reached MMI at the statutory 104 weeks and the hearing officer returned the case for another determination of MMI, if it was prior to the statutory 104 week date and an impairment rating.

Appellant, carrier herein, contends that the hearing officer erred, in that the treating doctor's certification of MMI was proper and had not been timely disputed. Carrier requests that we reverse the hearing officer's decision. Respondent, claimant, did not file a response.

DECISION

We find that the appeal in this matter was not timely filed within the time limits required by Section 410.202(a), that an untimely appeal is jurisdictional and that the decision of the hearing officer is the final administrative decision in this case. See Section 410.169. A review of the Texas Workers' Compensation Commission (Commission) records indicates that the decision of the hearing officer was distributed, by mail, on September 13, 1993, with a copy being sent to carrier and its attorney. Carrier in its appeal 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 mailed on September 13, 1993, the "deemed" date of receipt was five days later on September 18, 1993. As Section 410.202 requires a party to file a written request for review "not later than the 15th day after the date on which the decision of the hearing officer is received. . . .", the last day on which an appeal could be filed was Sunday, October 3, 1993. Rules 102.3 and 102.7 provide that if the last day of filing is a

Saturday, Sunday, or legal holiday the period is extended to include the next day that is not a Saturday, Sunday, or legal holiday, which in the instant case could be Monday, October 4, 1993. Carrier's appeal is dated October 5, 1993, reciting an October 5, 1993, certificate of service on the other party and was hand-delivered on October 5, 1993. The provisions of Rule 143.3(c) which allow until the 20th day after receipt of the decision for the Commission to receive the appeal are conditional on mailing the appeal no later than the 15th day after receipt of the decision. This was not the case here and the 20th day receipt by the Commission does not apply as the appeal was not placed in the mail by October 4, 1993. The appeal was one day late.

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.

The hearing officer's decision has become final.

Thomas A. Knapp
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Robert W. Potts
Appeals Judge