APPEAL NO. 93962

On July 14, 1993, a contested case hearing was held in (city), Texas, with the record being closed on September 15, 1993. The hearing officer was (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) (formerly V.A.C.S., Article 8308-1.01 *et seq*.). The parties stipulated that the appellant (claimant) was injured in the course and scope of her employment on (date of injury), and that she reached maximum medical improvement on February 2, 1993. The issue at the hearing was the impairment rating of the claimant. The Texas Workers' Compensation Commission (Commission) had designated (Dr. D) as the designated doctor. Based on the report of the designated doctor, the hearing officer found that the claimant has a five percent impairment rating and decided that the claimant is entitled to impairment income benefits for fifteen weeks. The claimant disagrees with the decision urging that her impairment rating should be 23% as found by another doctor. No response was filed by the carrier.

DECISION

Determining that the claimant's appeal was not timely filed and that the jurisdiction of the Appeals Panel has not been properly invoked, the hearing officer's decision has become final pursuant to Section 410.169.

Records of the Commission show that the hearing officer's decision was mailed to the claimant on October 1, 1993, with a cover letter of September 30, 1993. The claimant states that she received the decision on October 8, 1993.

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.(a)(3)). The hearing officer advised the parties of the 15-day period for filing an appeal. Rule 143.3(c) provides that a request for review shall be presumed to be timely filed if it is: (1) mailed on or before the 15th day after the date of receipt of the hearing officer's decision, and (2) received by the Commission not later than the 20th day after the date of receipt of the hearing officer's decision.

The 15th day after the date the claimant received the decision was Saturday, October 23, 1993; therefore, under Rule 102.3(a)(3), the filing period for her appeal was extended to Monday, October 25, 1993. The claimant's appeal, postmarked October 26, 1993, was one day late. Pursuant to Section 410.169, a decision of a hearing officer regarding benefits is final in the absence of a timely appeal. Consequently, the decision of the hearing officer in this case has become final.

Having reviewed the record, we conclude that had the claimant's appeal been timely filed, we would have ruled that the hearing officer's decision is supported by sufficient

evidence and is not against the great weight and preponderance of the evidence. Succinctly, Dr. M, who initially treated the claimant, assigned the claimant a 23% impairment rating. Dr. B, who also treated the claimant, assigned the claimant a 12% impairment rating. Dr. C, whom the claimant saw at the request of the carrier, assigned the claimant a five percent impairment rating. Dr. D, the designated doctor selected by the Commission, assigned the claimant a five percent impairment rating and provided an extensive narrative report detailing his findings. (Dr. B), who has also treated the claimant, said in an affidavit that he reviewed Dr. D's report and that in his opinion, Dr. D's rating was not valid or accurate for several reasons. Dr. D wrote a letter in which he rebutted the criticisms of Dr. B.

As to the weight to be given to the various medical reports, Section 408.125(e) provides that the report of the designated doctor chosen by the Commission regarding an impairment rating has presumptive weight and the Commission shall base the impairment rating on that report unless the great weight of the other medical evidence is to the contrary. We have previously held that it requires more than a preponderance of the medical evidence to overcome the report of the designated doctor; the medical evidence must be determined to be the "great weight" of the medical evidence contrary to the report of the designated doctor. Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992.

In the instant case the hearing officer determined that the great weight of the other medical evidence is not contrary to the designated doctor's report and found that the claimant has a five percent impairment rating as reported by the designated doctor. Having reviewed the record and the claimant's appeal, we would have found no basis for disturbing the hearing officer's decision had our jurisdiction been properly invoked.

The decision of the hearing officer became final under Section 410.169.

Robert W. Potts
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Philip F. O'Neill
Appeals Judge