APPEAL NO. 93998

On September 8, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding as the 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 issues at the hearing were maximum medical improvement (MMI) and impairment rating. Based on the report of (Dr. Y), the designated doctor chosen by the Texas Workers' Compensation Commission (Commission), the hearing officer determined that the appellant (claimant) reached MMI on November 3, 1992, with a five percent impairment rating. The claimant filed a document (hereinafter "the document") with the Commission indicating that he had served a copy of an "attached request for appeal" on the respondent (carrier). The document filed with the Commission is in essence a certificate of service and no request for appeal was attached to it. The carrier responds that it too only received the certificate of service without an attachment. A note in the appeals file indicates that the Commission field office attempted to contact the claimant regarding the document he filed with the Commission but was unsuccessful in reaching him.

DECISION

Determining that a request for review has not been timely filed by either party, the jurisdiction of the Appeals Panel has not been properly invoked and the decision of the hearing officer has become final pursuant to Section 410.169.

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." Section 410.202(c) provides that "A request for appeal or a response must clearly and concisely rebut or support the decision of the hearing officer on each issue on which review is sought."

The decision of the hearing officer was mailed to the claimant on October 14, 1993. The claimant does not state when he received the decision. Thus, we apply Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(h) which provides that the Commission shall deem the received date of notices and other written communications to be five days from the date mailed. The claimant is deemed to have received the hearing officer's decision on October 19, 1993, and the last day for filing his appeal was Wednesday, November 3, 1993. The Commission received the document on November 4, 1993, and it appears that the document was mailed on November 1, 1993. Thus, under Rule 143.3(c) the document may be presumed to be timely filed. However, nowhere in the document does the claimant indicate that he disputes or disagrees with the hearing officer's decision nor does he indicate that he wants the decision reviewed for any purpose. While we have liberally interpreted Section 410.201(c) (formerly Article 8308-6.41(b)) to allow a simple statement of disagreement with the hearing officer's decision to suffice as an appeal, in the instant case, the document filed by the claimant fails to indicate any disagreement or dispute with the hearing officer's decision and simply cannot be considered a request for appeal under

Section 410.201(c).

Had the claimant filed a timely and sufficient request for appeal, we would have found that the hearing officer's decision is supported by sufficient evidence and is not against the great weight and preponderance of the evidence. Succinctly, the claimant injured his back at work on (date of injury). He has been treated by several doctors, including (Dr. M) who treated him for several months. Dr. M diagnosed a chronic back sprain and in a Report of Medical Evaluation (TWCC-69), Dr. M certified that the claimant reached MMI on November 3, 1992, with a zero percent impairment rating. Apparently, Dr. M's report was disputed and the Commission selected Dr. Y as the designated doctor. Dr. Y diagnosed chronic lumbosacral syndrome and in a TWCC-69 certified that the claimant reached MMI on November 3, 1992, with a five percent impairment rating. Another doctor that has treated the claimant, Dr. D, reported that the claimant has not reached MMI and that he would continue to improve with conservative care. The hearing officer found that the great weight of the other medical evidence was not contrary to Dr. Y's report of MMI and assignment of a five percent impairment rating and concluded that the claimant reached MMI on November 3, 1992, with a five percent impairment rating. Pursuant to Sections 408.122(b) and 408.125(e) the report of a designated doctor chosen by the Commission has presumptive weight and the Commission must base its determinations of MMI and impairment rating on the report of the designated doctor unless the great weight of the other medical evidence is to the contrary. Having reviewed the record, we conclude that had the claimant filed a timely and sufficient appeal, we would have affirmed the decision of the hearing officer as being supported by sufficient evidence and as not being against the great weight and preponderance of the evidence.

Since a request for appeal of the hearing officer's decision has not been filed within the statutory time period for filing an appeal, the decision of the hearing officer has become final under Section 410.169.

Robert W. Potts
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge