

APPEALS PANEL NO. 94008

On August 10, 1993, a contested case hearing was held in (City), Texas, with the record being closed on November 24, 1993. _____ presided 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: (1) whether the appellant (claimant) sustained an occupational disease while in the course and scope of his employment with his employer, (employer), on (Date of Injury); and (2) whether the claimant timely reported his occupational disease to the employer. The hearing officer determined that the claimant did not sustain an occupational disease while in the course and scope of his employment and that the claimant did not timely report his claimed occupational disease to his employer. The hearing officer decided that the claimant is not entitled to workers' compensation benefits. The claimant disagrees with the hearing officer's decision and requests that we reverse it and render a decision in his favor, or reverse and remand for further proceedings. The respondent (carrier) responds that the claimant's appeal was not timely filed and that the hearing officer's decision is supported by the evidence.

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 Texas Workers' Compensation Commission (Commission) show that the hearing officer's decision was mailed to the claimant on December 9, 1993, with a cover letter dated December 8, 1993. The appeal states that the claimant received the decision on December 15, 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 143.3(a)). 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 Thursday, December 30, 1993. Thus, December 30, 1993, was the last day for timely filing of the appeal. No envelope is with the appeal. Thus, there is no indication that the appeal was mailed to the Commission. Consequently, there is no basis to invoke the presumption of timely filing afforded under Rule 143.3(c) for appeals which are mailed on or before the 15th day after receipt of the decision and which are received by the Commission not later

than the 20th day after receipt of the decision. There is also no cover letter with the appeal and the appeal itself is undated except for the certificate of service which states that the appeal was served on the carrier's attorney on January 3, 1994. The appeal was date stamped as received by the Commission on January 3, 1994.

Considering that Section 410.202(a) requires that the appeal be served on the other party on the same date the appeal is filed with the Commission, and that the claimant's appeal shows that it was served on the other party on January 3, 1994, which is also the date the appeal was received by the Commission, with no indication of mailing on an earlier date, we are left to conclude that the appeal was in fact filed with the Commission on January 3, 1994, which made the appeal four days 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.

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

Robert W. Potts
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Lynda H. Nesenholtz
Appeals Judge