

APPEAL NO. 94057

This appeal is brought pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on December 3, 1993, in (city), Texas, with (hearing officer) presiding as hearing officer. The issues at the hearing were whether the respondent (claimant) was intoxicated on marijuana at the time of his injury on (date of injury), and whether the appellant (carrier) timely controverted the claim for benefits under the 1989 Act. The hearing officer determined that the claimant was not intoxicated with marijuana at the time of his injury and that the carrier timely controverted the claim. The carrier appeals only the issue of intoxication arguing that the hearing officer improperly and prejudicially allowed live testimony from a witness whose identity had not previously been disclosed by the claimant as required by Tex. W. C. Comm'n, 28 TEX. ADMIN. CODE § 141.4 (Rule 141.4) and that the evidence showed conclusively that the claimant was intoxicated at the time of his injury. The claimant has not filed a response to this appeal.

DECISION

Determining that the request for review was not timely filed and that the jurisdiction of the Appeals Panel has not been properly invoked, the decision of the hearing officer has become final pursuant to the provision of 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." See *also* Rule 143.3(a)(3). Section 406.011(a) provides that notice to a designated carrier representative in (city) constitutes notice to the insurance carrier. TWCC Advisory 93-11, issued November 4, 1993, advised all carriers and their representatives that effective December 15, 1993, all documents and notices, including hearing officer decisions, would be placed in the carrier's (city) representative's box in the Texas Workers' Compensation Commission (Commission's) central office and that "[n]otice to the Carrier for all purposes will be established by this notification." See Rule 102.5(b) and Rule 156.1. Additional copies would be mailed to the carrier's attorney.¹ Rule 102.5(h) provides that, for purposes of determining the date of receipt of those notices and other written communications which require action by a specific date after receipt, the Commission shall deem the received date to be five days after the date mailed. The Appeals Panel has previously applied Rule 102.5(h) to hearing officer decisions placed in the (city) representative's box in the Commission's central office. See Texas Workers' Compensation Commission Appeal No. 93519, decided July 28, 1993.

In the case under appeal, Commission records disclose that the hearing officer's

¹TWCC Advisory 93-11, issued November 4, 1993, superseded TWCC Advisory 92-07, issued November 3, 1992, which established the system for notifying carrier's through their (city) representative, but did not provide for "courtesy copies" to attorneys of record.

decision was distributed to the carrier's (city) representative's box in the Commission's central office on December 22, 1993, with a cover letter dated December 21, 1993. To be timely, an appeal would have had to be dated and mailed no later than January 11, 1994, which is 15 days after December 27th, the date the decision was deemed to have been received by the carrier. The carrier's appeal is dated January 13, 1994, and was received by facsimile transmission on the same day. The date the carrier's appeal was filed exceeded by two days the 15-day time period for filing an appeal, even after adding five days under the deemed receipt provision in Rule 102.5(h).²

Having determined that the carrier's appeal was not timely filed, the decision of the hearing officer is final. Section 410.169.

Alan C. Ernst
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Gary L. Kilgore
Appeals Judge

²Carrier's attorney notes in his appeal that the decision of the hearing officer was received "at their (city) offices on December 28, 1993." Even were we to ignore Rule 102.5(h) and its provisions on the deemed date of receipt, which we do not, and calculate the timeliness of this appeal from December 28, 1993, it would still have arrived at the Commission's central office one day late.