

## APPEAL NO. 94073

This appeal arises under the TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On December 9, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. The sole issue presented to the hearing officer for resolution was: Did the claimant sustain an injury in the course and scope of his employment on (date of injury)? The hearing officer determined that the appellant, claimant, did not sustain a neck or back injury in the course and scope of his employment on (date of injury). Claimant contends that the hearing officer's decision is against the great weight of the evidence and requests that we reverse the hearing officer's decision and render a decision in his favor. Respondent, carrier, contends that the claimant's appeal was not timely filed and in the alternative responds that the decision is supported by the evidence and requests that we affirm the decision.

### 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 December 21, 1993. Claimant 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. Rules 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 December 21, 1993, the "deemed" date of receipt was five days later on December 26, 1993. As Section 410.202(a) 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 Monday, January 10, 1994. Claimant's appeal is dated January 18, 1994, and the Federal Express notation indicates the appeal was sent by Federal Express on January 18, 1994, and received by the Commission on January 19, 1994. Because the appeal was not received by the Commission no later than the 20th day after the decision of the hearing officer was deemed to have been received, pursuant to Rule 143.3(c) the appeal is untimely.

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 and order have become final.

---

Thomas A. Knapp  
Appeals Judge

CONCUR:

---

Philip F. O'Neill  
Appeals Judge

---

Alan C. Ernst  
Appeals Judge