

APPEAL NO. 94091

On November 24, 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). The appellant (claimant) was injured at work on (date of injury). The issues at the hearing were maximum medical improvement (MMI) and the impairment rating. The hearing officer determined that the appellant (claimant) reached MMI on August 1, 1992, with a seven percent impairment rating as reported by the designated doctor chosen by the Texas Workers' Compensation Commission (Commission), and decided that the claimant is entitled to 21 weeks of impairment income benefits. The claimant disagrees with the decision. 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 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 Section 410.169.

Records of the Commission show that on December 17, 1993 the hearing officer's decision was distributed to the claimant, the claimant's attorney, the carrier, the carrier's attorney, and the employer, with a cover letter of December 16, 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."

In the appeal, the claimant's attorney states that he received the hearing officer's decision on January 18, 1994. The appeal does not state when the claimant received the hearing officer's decision. The envelope transmitting the appeal is postmarked January 21, 1994, and the appeal was received by the Commission on January 24, 1994.

We have previously held that the operative date for determining the timeliness of an appeal is the date the claimant, and not his attorney, received the hearing officer's decision. Texas Workers' Compensation Commission Appeal No. 92219, decided July 15, 1992. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(h) (Rule 102.5(h)) provides that "[f]or 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." As previously noted, the appeal does not state the date the claimant received the hearing officer's decision. Under Rule 102.5(h) the claimant is deemed to have received the decision on December 22, 1993. The 15th day after the date of receipt was Thursday, January 6, 1994, and that was the date by which the appeal had to be filed. The appeal is dated January 20, 1994, postmarked

January 21, 1994, and was not received by the Commission until January 24, 1994. Thus, the appeal was clearly untimely and failed to invoke our jurisdiction.

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 has become final.

Robert W. Potts
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Gary L. Kilgore
Appeals Judge