

APPEAL NO. 94111

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held in (city), Texas on December 14, 1993, (hearing officer) presiding. The appellant, hereinafter claimant, appeals the hearing officer's decision that she did not sustain a compensable injury on (date of injury); the claimant in support cites to the evidence of the events occurring on that date and the medical reports and diagnoses resulting therefrom. The respondent, hereinafter carrier, contends that the claimant's appeal is untimely; with regard to the merits of the appeal, the carrier contends that numerous medical reports in evidence question the identity or existence of an injury arising out of the incident at claimant's work place, and states that claimant failed to prove a causal connection between her work environment and the alleged injury.

DECISION

Because we determine that the claimant's appeal was not timely filed and that the jurisdiction of the Appeals Panel has not been properly invoked, we hold that the hearing officer's decision has become final pursuant to Section 410.169, which provides in pertinent part that a hearing officer's decision is final in the absence of a timely appeal by a party.

Records of the Texas Workers' Compensation Commission (Commission) show that the hearing officer's decision was mailed to the claimant on January 11, 1994, by cover letter dated January 10, 1994. The claimant's appeal recites that she received the decision on January 12th and asserts that "[t]his appeal is within the 15 day limit." However, her appeal, though dated January 27 (the last day for timely filing), was date stamped by the Commission as received by hand delivery on January 28th. The certificate of service states that the claimant also hand delivered a copy of the appeal to the carrier on January 28th.

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)). As noted above, the 15th day after the date the decision was received was January 27th.

The Commission, by rule, has provided for an extended period for receipt of an appeal, but only under the circumstances prescribed therein. 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. However, as the claimant's appeal indicates, it was not mailed within the requisite 15-day period, even though it was received by the Commission within the 20 days. Both portions of Rule 143.3(c) must be complied with in order for an appeal to be timely. See Texas Workers' Compensation Commission Appeal No. 94065, decided March 1, 1994.

Based upon the foregoing, we determine that the claimant's appeal was untimely and the jurisdiction of the Appeals Panel was not properly invoked; therefore, the decision of the hearing officer has become final pursuant to Section 410.169.

Lynda H. Neseholtz
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Alan C. Ernst
Appeals Judge