

APPEAL NO. 94180

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 January 11, 1994, (hearing officer) presiding. In response to the issues before him, the hearing officer held that the claimant, who is the appellant in this action, did not sustain a compensable injury in the form of an occupational disease in the course and scope of his employment on or about (date of injury); that he did not report an injury to his employer on or before the 30th day after the date of the injury and did not show good cause for failing to timely report; and that he did not sustain disability from the claimed injury. The claimant appeals, disputing pertinent findings of fact and portions of the statement of evidence. He also contends that he needs a lawyer, to assist him in settling the unresolved disputes. The carrier did not file a response.

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 that a hearing officer's decision is final in the absence of a timely appeal by a party.

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 recorded proceedings of the hearing reflect that the hearing officer at the close of the hearing advised the parties of this requirement.

Records of the Texas Workers' Compensation Commission (Commission) show that the hearing officer's decision, which was dated January 24, 1994, was mailed to the claimant on January 25th. The claimant's appeal does not recite a date on which the decision was received. Rule 102.5 provides that for purposes of determining the date of receipt for those notices and other written communications which require action by a date specific after receipt (such as an appeal), the Commission shall deem the received date to be five days after the date mailed. Five days after January 25th is January 30th, which would make claimant's appeal due on February 14th.

Claimant's appeal, which was undated, was date stamped as received by the Commission on February 17th; the attached certificate of service indicates it was hand-delivered on that date to the Commission and to the carrier. Thus, claimant's appeal was filed later than the required 15 days and is untimely.

Based upon the foregoing, we determine that 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. Nesenholtz
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Thomas A. Knapp
Appeals Judge