

APPEAL NO. 94340

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on September 10, 1993, in (city), Texas, with (hearing office) presiding as hearing officer. The sole issue at the CCH was whether the appellant (claimant herein) had reached maximum medical improvement (MMI), and if so on what date. The hearing officer found that as of April 30, 1993, the date of his examination by the designated doctor, the claimant had not reached MMI based upon the report of the designated doctor. The hearing officer ordered the carrier to provide medical and income benefits in accordance with the 1989 Act. On March 24, 1994, the claimant filed a request for review stating he was still suffering from the effects of his injury, was not receiving physical therapy and needed help. The Texas Workers' Compensation Commission (Commission) determined that no copy of the claimant's request for review had been sent to the respondent (carrier herein) and on April 7, 1994, transmitted a copy to the carrier by facsimile transmission. The Commission has not received any response to the claimant's request for review.

DECISION

Determining that the claimant's appeal 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.

Tex W. C. Comm'n, 28 TEX. ADMIN. CODE § 142.16 (Rule 142.16) provides that the Commission shall furnish the parties a copy of the hearing officer's decision. In regard to communications from the Commission, Rule 102.5 provides, in relevant part, that:

(a) All notices and written communications to the claimant or claimant's representative will be mailed to the last address supplied by that claimant or representative.

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(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.

Section 410.202(a) provides as follows: "To 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."

Rule 143.3(a)(3) provides that a request for review of the hearing officer's decision shall be filed with the Commission's central office in Austin "not later than the 15th day after receipt of the hearing officer's decision. . . ." Rule 143.3(c) goes on to provide the following:

(c)A request made under this section shall be presumed to be timely filed or timely served if it is:

(1)mailed on or before the 15th day after the date of receipt of the hearing officer's decision, as provided in subsection (a) of this section; and

(2)received by the commission or other party not later than the 20th day after the date of receipt of the hearing officer's decision.

Finally, Section 410.169 provides in relevant part: "A decision of a hearing officer regarding benefits is final in the absence of a timely appeal by a party. . . ."

In the present case, the hearing officer signed his decision on September 17, 1993, seven days after the close of the hearing. By letter of September 28, distributed October 1, 1993, the Commission forwarded to the parties a copy of the decision. Claimant's copy was sent to the exact address that the claimant uses as his return address on his request for review. Under Rule 102.5(h) the claimant was presumed to have received this notice five days after it was distributed or by October 6, 1993. The claimant then had 15 days or to October 21, 1993, to mail a copy to the Commission, and if so mailed, the request for review would have been timely filed if received by the Commission within 20 days of October 6, 1993, or by October 26, 1993. Instead the claimant mailed his request for review to the Commission postmarked March 23, 1994, and it was received on March 24, 1994. Thus under Section 410.169, we must find that the decision of the hearing officer is final.

Although it is not necessary for our decision to reach the merits of the appeal, we note that the claimant appeals a decision of the hearing officer which is entirely favorable to him on all issues. If, as the claimant seems to state in his request for review, he does not believe he is receiving full medical benefits, it has nothing to do with the decision from this CCH. The hearing officer here ordered the carrier to pay "medical and income benefits in accordance with this decision, the Act and the implementing Rules." If the claimant believes that the carrier has not complied with this order, his remedy might be to contact the local field office of the Commission for aid in enforcing the order.

For the foregoing reasons, the decision and order of the hearing officer are final.

Gary L. Kilgore
Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Lynda H. Nesenholtz
Appeals Judge