

APPEAL NO. 94360

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). At a contested case hearing held in (city), Texas, on January 14, 1994, the hearing officer, (hearing officer), finding that the appellant (claimant) "was injured on (date of injury), because he attacked [his supervisor] and tried to hurt him due to a personal disagreement," concluded that claimant did not sustain a compensable injury on that date and, consequently, did not have disability under Section 401.011(16) of the 1989 Act. The hearing officer's decision stated that any injury claimant sustained was caused by his willful intention and attempt to unlawfully injure another person, thereby relieving the respondent (carrier) of liability. See Section 406.032 which provides for certain exceptions to insurance carriers' liability for compensation. Claimant's request for review essentially challenges the sufficiency of the evidence to support the hearing officer's decision. Claimant also asserts that his attorney allowed the time to file an appeal to expire and attaches a statement from a doctor to the effect that the doctor reviewed the decision and felt claimant should have prevailed. The response timely filed by the respondent (carrier) asserts that claimant did not show good cause for his untimely appeal.

DECISION

Determining that the 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 the provisions of Section 410.169.

Section 410.202(a) provides, in part, that a party desiring to appeal the decision of the hearing officer shall file a written appeal with the Appeals Panel not later than the 15th day after the date the hearing officer's decision is received from the hearings division of the Texas Workers' Compensation Commission (Commission). Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(a)(3) (Rule 143.3(a)(3)) provides that a request for review be filed with the Commission's central office in Austin not later than the 15th day after the date of receipt of the hearing officer's decision. Rule 143.3(c) provides that a request shall be presumed to be timely filed if it is mailed on or before the 15th day after the date of receipt of the hearing officer's decision and is received by the Commission not later than the 20th day after such date. Records of the Commission show that the hearing officer's decision was distributed to the claimant on February 10, 1994, under a cover letter dated February 8, 1994, and was addressed to claimant at the address from which he mailed his appeal. Since claimant did not state the date he received the decision, we apply Rule 102.5(h) which provides, in part, that "the commission shall deem the received date to be five days after the date mailed." Accordingly, claimant is deemed to have received the decision on February 15, 1994, and his appeal was required to have been filed not later than 15 days thereafter. Claimant's appeal bore the postmark date of March 26, 1994, and was received by the Commission on March 28, 1994.

Since claimant's request for review was not mailed until March 26, 1994, his appeal was not timely filed, and, consequently, the jurisdiction of the Appeals Panel was not

properly invoked. The carrier's response speaks of there being no showing of "good cause" by the claimant. However, matters of jurisdiction do not admit of good cause exceptions.

Pursuant to Section 410.169 and Rule 142.16(f), the decision of the hearing officer has become final.

Philip F. O'Neill
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Joe Sebesta
Appeals Judge