

APPEAL NO. 950009  
FILED FEBRUARY 3, 1995

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Upon remand pursuant to our decision in Texas Workers' Compensation Commission Appeal No. 94493, decided June 3, 1994, the hearing officer conducted a contested case hearing on July 26, 1994, and closed the hearing record on November 16, 1994. The hearing officer resolved the unresolved issue on remand by concluding that the appellant (claimant) failed to establish by a preponderance of the evidence that he had disability (defined in Section 401.011(16)) after April 15, 1991. Claimant's appeal merely requests a review of the decision. See Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(a)(2) (Rule 143.3(a)(2)). The respondent requests affirmance.

DECISION

Determining that the request for 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 the provisions of Section 410.169.

Records of the Texas Workers' Compensation Commission (Commission) show that the hearing officer's decision was distributed to the claimant and to his attorney on December 5, 1994, under a cover letter of December 2, 1994.

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* Rule 143.3(a)(3). Claimant does not state the date he received the hearing officer's decision and thus we apply Rule 102.5(h) which provides that the Commission shall deem the received date of written communications to be five days from the date mailed. Accordingly, claimant is deemed to have received the decision on December 10, 1994, and his deadline to file the appeal was December 25, 1994. Pursuant to Rules 102.3(a)(3) and 102.7, that deadline was extended to December 27, 1994. Claimant filed his request for appeal by mail. Rule 143.3(c) provides that a request for appeal 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 received by the Commission not later than the 20th day after the date of receipt of the decision. The envelope containing the appeal shows a meter stamp date of December 22, 1994, but a U.S. Postal Service date stamp of December 28, 1994. December 28, 1994, was not within the 15-day period required for the mailing of an appeal and even so the appeal did not reach the Commission within 20 days as required under the Rule. The Commission's stamp shows that the appeal was not received until January 3, 1995, a date more than 20 days after claimant was deemed to

have received the decision. Accordingly, claimant's appeal was not timely filed and the jurisdiction of the Appeals Panel has not been properly invoked.

Because claimant did not timely file an appeal from the hearing officer's decision, the hearing officer's decision and order have become final pursuant to Section 410.169.

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Stark O. Sanders, Jr.  
Chief Appeals Judge

CONCUR:

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Joe Sebesta  
Appeals Judge

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Gary L. Kilgore  
Appeals Judge