

APPEAL NO. 950010
FILED FEBRUARY 7, 1995

This appeal arises pursuant to the Texas Workers' Compensation Act of 1989, TEX. LAB. CODE ANN. § 401.001 et seq. (1989 Act). On November 15, 1994, a hearing was. He determined that appellant (claimant) did not have disability from March 10, 1994, until the date of hearing. Claimant asserts that the decision is against the great weight and preponderance of the evidence and offers more medical evidence. Respondent (carrier) states that the claimant's appeal is untimely and in the alternative, asks for affirmance based on sufficiency of the evidence.

DECISION

Finding that the request for review was not timely made, the decision of the hearing officer is final. See Sections 410.169 and 410.202.

The decision and order of the hearing officer were signed on November 21, 1994, and distributed to the parties on December 5, 1994, by cover letter dated November 30, 1994. Tex. W. C. Comm'n, 28 TEX. ADMIN CODE § 102.5(h) (Rule 102.5(h)) provides that a notice from the Texas Workers' Compensation Commission (Commission) will be deemed to be received five days after mailing. With five days allowed for mailing, claimant is deemed to have received the decision of the hearing officer on December 10, 1994. Section 410.202 then provides that a request for appeal must be filed no later than 15 days from the date the decision of the hearing officer is received. Fifteen days from December 10th, is Sunday, December 25, 1994; Rule 102.3(a)(3) provides that if the last day of a period is a Sunday or legal holiday, then the period is extended to include the first day that is not a Sunday or legal holiday. In this case, the 15 days to appeal would be extended to December 27th since December 26th was a legal holiday.

Claimant's appeal is dated December 28, 1994, and the envelope in which it was received is postmarked December 29, 1994. Rule 143.3 provides that a request for appeal will be presumed to be timely if mailed on or before the 15th day after receipt of the hearing officer's decision. The appeal was mailed two days after the final allowable date for mailing and is untimely.

In addition to the 1989 Act and Rules as referenced, the hearing officer at the conclusion of the hearing told the parties on the record that any appeal must be filed within 15 days after receipt of the hearing officer's decision.

With no timely appeal, the decision and order of the hearing officer are final. See Section 410.169.

Joe Sebesta
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Robert W. Potts
Appeals Judge