

APPEAL NO. 950012
FILED FEBRUARY 9, 1995

Following a contested case hearing held on November 2, 1994, the hearing officer found that on _____, the appellant (claimant) was asked by her employer to do an extensive task within her usual duties but in an unusually short period of time thus causing claimant to suffer mental stress. Further finding the evidence insufficient to establish that the employer's request of claimant was anything other than a legitimate personnel action, the hearing officer concluded that claimant's mental trauma injury was not compensable under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 408.006(b) (1989 Act). Claimant's appeal challenges the sufficiency of the evidence to support the finding concerning the legitimate personnel action. The response filed by the respondent (carrier) first contends that claimant's appeal was untimely and thus did not invoke the jurisdiction of the Appeals Panel. The carrier's response goes on to argue the sufficiency of the evidence to support the challenged finding and conclusion.

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 and order of the hearing officer have become final pursuant to Section 410.169.

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)(3) (Rule 143.3(a)(3)). Records of the Texas Workers' Compensation Commission (Commission) show that the hearing officer's decision was distributed to the claimant and to her attorney on December 8, 1994, under a cover letter of December 7, 1994. Claimant's appeal does not indicate the date she received the decision and thus we apply Rule 102.5(h) which provides that the Commission shall deem the received date of its written communications to be five days from the date mailed. Accordingly, claimant is deemed to have received the hearing officer's decision on December 13th and thus the filing deadline for her appeal was December 28, 1994. Claimant filed her 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 hearing officer's decision. Thus, to be timely filed claimant's appeal must have been mailed not later than December 28, 1994, and must have been received by the Commission not later than January 2, 1995. Claimant's appeal was dated and apparently mailed on December 30, 1994, and was received by the Commission on January 3, 1995. Accordingly, it was not timely filed and did not properly invoke the jurisdiction of the Appeals Panel.

The decision and order of the hearing officer have become final pursuant to Section 410.169.

Philip F. O'Neill
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Joe Sebesta
Appeals Judge