

APPEAL NO. 950039  
FILED FEBRUARY 16, 1995

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on November 17, 1994. The hearing officer determined the issues before her as follows: that the carrier did not contest compensability; that on \_\_\_\_\_ the claimant sustained a compensable injury to his lower back in the course and scope of his employment; that claimant had disability from \_\_\_\_\_, until April 1, 1993; and that the first certification of maximum medical improvement (MMI) and impairment rating (IR) assigned by claimant's treating doctor, (Dr. S) became final pursuant to Texas Workers' Compensation Commission (Commission) Rule 130.5(e) (Tex. W. C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e)).

The claimant appeals this decision, stating that back injuries can take longer than 90 days to diagnose, that the medical reports support his position, and that the law should require that injured workers are put back to work. The carrier contends in its response that the claimant's appeal is untimely and did not contain a certifying statement; it also contends that the evidence supports the hearing officer's decision.

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 and order of the hearing officer have become final pursuant to the provisions of 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* Rule 143.3(a)(3). A request for review is presumed to be timely filed if it is mailed on or before the 15th day after the date of receipt of the decision and is received by the Commission not later than the 20th day after the date of receipt. Rule 143.3(c).

Records of the Commission show that the hearing officer's decision in this case was distributed to the parties on December 5, 1994, by cover letter dated December 2, 1994. Pursuant to Rule 102.5(h), a party is deemed to have received the decision and order five days after the date it was mailed, or in this case by December 10, 1994. The 15th day after this deemed date of receipt was December 25, 1994, a Sunday; because the following day was a state holiday, the last day for timely filing became December 27, 1994. The claimant's appeal, however, was postmarked January 3, 1995, and date stamped as received by the Commission on January 5, 1995; therefore the claimant's appeal was not timely mailed pursuant to the statute and rules cited above.

Claimant makes the statement in his appeal, without explanation, that he had a new address. Records of the Commission show that the claimant contacted the Commission on December 15, 1994, to request that the hearing officer's decision be sent to an address in (state), but that this was not a permanent address; while a copy of the decision was mailed on December 16, 1994, in response to this request, there is nothing to indicate that claimant did not receive the decision as originally mailed or that it had been returned as undeliverable. This panel has previously held that an appeal was untimely despite the fact that a claimant received the hearing officer's decision after returning from vacation. Texas Workers' Compensation Commission Appeal No. 92727, decided February 12, 1993. Further, the claimant does not contend that he had supplied the Commission with a new address which the Commission had failed to use. See *e.g.*, Texas Workers' Compensation Commission Appeal No. 94564, dated June 21, 1994. We note that at the CCH the claimant stated that he had had several addresses over approximately a year's period, that when he moved he did not have his mail forwarded, and that the Commission and the carrier knew of some of his addresses but not others. We further note that the recording of the proceedings below reflect that the hearing officer advised the parties of the statutory requirement concerning appeals.

Because we find the claimant's request for review not to be timely filed, the jurisdiction of the Appeals Panel was not properly invoked, and the decision and order of the hearing officer have become final pursuant to Section 410.169 and the rules of the Commission.

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Lynda H. Nesenholtz  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Alan C. Ernst

Appeals Judge