

APPEAL NO. 950080  
FILED FEBRUARY 27, 1995

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on December 7, 1994, before hearing officer. With regard to the single issue before her the hearing officer held that the claimant had disability from May 8, 1994, through the date of the hearing. The carrier appeals, contending that this determination finds no support in the evidence or, in the alternative, is supported by insufficient evidence. The claimant did not file a response.

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.

Records of the Texas Workers' Compensation Commission (Commission) show that the hearing officer's decision was distributed to the parties on December 22, 1994, by cover letter dated December 21, 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* Tex. W. C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(a)(3) (Rule 143.3(a)(3)). Notices and communications, including decisions of hearing officers, are provided to a carrier's Austin representative. Rule 102.5(b) and Rule 156.1. See *also* TWCC Advisory 93-11, dated November 4, 1993, wherein all carriers and their representatives were advised that all documents and notices, including hearing decisions, would be placed in the carrier's Austin representative's box in the Commission's central office. In this case, the Commission's cover letter reflects that that procedure was followed, and there is nothing to indicate that the regular, routine procedure of placing a copy in the representative's box was not followed.

Rule 102.5(h) provides that the Commission shall deem the received date of written communications to be five days from the date mailed (or, as here, placed in the Austin representative's box). Since the hearing officer's decision was distributed on December 22, 1994, and applying the five day deemed receipt rule plus the 15 days for filing an appeal, the last day for the carrier's timely filing of the appeal was January 11, 1995. Two copies of carrier's appeal were sent to the Commission, both dated January 13, 1995. One was sent by overnight delivery, with the delivery slip dated January 13, 1995, and the other, sent by certified mail, was postmarked as of that date. The two were date stamped

as received by the Commission on January 17, 1995, and January 19, 1995, respectively. Therefore, the carrier's appeal is untimely.

In its appeal the carrier states that the hearing officer's decision "was received on December 30, 1994," thus making its appeal timely. It is not clear whether the carrier is referring to receipt by the carrier or its counsel. As noted earlier, the appropriate rule deems carrier's receipt to be no later than five days from distribution to carrier's box. In addition, the Appeals Panel has held that the operative date for purposes of appeal is the date the party, and not its attorney, receives the decision. Texas Workers' Compensation Commission Appeal No. 92219, decided July 15, 1992.

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

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Lynda H. Nesenholtz  
Appeals Judge

CONCUR:

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Robert W. Potts  
Appeals Judge

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Susan M. Kelley  
Appeals Judge