

APPEAL NO. 950087  
FILED FEBRUARY 27, 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 7, 1994, a hearing was held. She determined that the appellant's (claimant) impairment rating (IR) for his compensable knee injury was six percent (the parties stipulated that maximum medical improvement had been reached). Claimant asserts that the IR provided by his treating doctor, (Dr. W) is more accurate and that Dr. W is most qualified to provide the rating. Respondent (carrier) replies that the appeal was not timely made, and in the alternative, states that the decision should be upheld.

DECISION

Finding that the request for review was not timely filed, 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 December 12, 1994, and distributed to the parties on December 23, 1994, under a cover letter dated December 22, 1994. Claimant did not state the date he received the decision and order. 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. 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. With five days allowed for mailing, claimant is deemed to have received the decision no later than December 28, 1994. Claimant's appeal is dated January 12, 1995, but the envelope in which it was received is postmarked January 14, 1995. The request is marked as received by the Commission on January 19, 1995.

Rule 143.3 provides that a request for appeal will be presumed to be timely if mailed on or before the 15th day after the appealing party receives the hearing officer's decision and then that appeal is received by the Commission no later than the 20th day after the date of receipt by the appealing party. The appeal was mailed 17 days after December 28, 1994, and was received by the Commission 22 days after that date; it is clearly untimely. Since the 15th day, January 12, 1995, falls on a Thursday, no extra day is allowed by Rule 102.3. We note also that at the end of the hearing, the hearing officer announced on the record that an appeal must be filed no later than 15 days after receipt of the decision.

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

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Joe Sebesta  
Appeals Judge

CONCUR:

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Stark O. Sanders, Jr.  
Chief Appeals Judge

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Robert W. Potts  
Appeals Judge