

APPEAL NO. 950118
FILED MARCH 1, 1995

On October 27, 1994, a contested case hearing was held. The hearing was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 et seq. (1989 Act). With respect to the three issues at the hearing, the hearing officer determined that the respondent (carrier) contested compensability; that the appellant (claimant) did not sustain an injury in the course and scope of her employment on _____; and the claimant has not had disability. The hearing officer ordered that the carrier is not liable to the claimant for workers' compensation benefits. The claimant disagrees with the hearing officer's decision. The carrier responds that the claimant's appeal was not timely filed and that the decision is supported by the evidence.

DECISION

Determining that the claimant's appeal was not timely filed and that the jurisdiction of the Appeals Panel has not been properly invoked, the hearing officer's decision and order have become final pursuant to Section 410.169.

Records of the Texas Workers' Compensation Commission (Commission) show that the hearing officer's decision was mailed to the claimant on December 6, 1994, with a cover letter dated December 5, 1994. The claimant states that she received the decision on December 22, 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) (Rule 143.3(a)). Rule 143.3(c) provides that a request for review shall be presumed to be timely filed if it is: (1) mailed on or before the 15th day after the date of receipt of the hearing officer's decision, and (2) received by the Commission not later than the 20th day after the date of receipt of the hearing officer's decision. The hearing officer advised the parties at the close of the hearing that they had 15 days from the date of receipt of her decision to file an appeal. The 15th day after the date the claimant states she received the hearing officer's decision was Friday, January 6, 1995. The claimant's appeal is dated January 19, 1995, and the envelope in which it was mailed is postmarked January 20, 1995. The appeal was received by the Commission on January 24, 1995. We conclude that the claimant's appeal was not timely filed with the Commission. Pursuant to Section 410.169, a decision of a hearing officer regarding benefits is final in the absence of a timely appeal.

The hearing officer's decision and order have become final under Section 410.169.

Robert W. Potts
Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Tommy W. Lueders
Appeals Judge