

APPEAL NO. 980121

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on November 25, 1997, with hearing officer. The issues at the CCH were whether the appellant, who is the claimant, sustained a compensable injury on \_\_\_\_\_, and had disability from such injury.

The hearing officer found that claimant was not injured as she claimed and had in fact staged the incident for financial gain. Because the claimant was found not to have a compensable injury, the hearing officer found that any inability to work was caused by something other than an injury and claimant did not therefore have "disability" as defined by the 1989 Act.

The claimant has appealed, arguing that she was hurt as she contended and has compensable disability as a result. The respondent, who is the carrier, responds that the claimant's appeal is untimely. The carrier also argues facts from the record that it believes support the decision.

DECISION

Determining that the appeal was not timely filed by the claimant, we are unable to consider it. The decision of the hearing officer has become final.

A request for review of a hearing officer's decision must be filed within 15 days of the date that it is received by the party. Section 410.202. The decision in this case was mailed to the claimant on December 22, 1997. According to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(h) (Rule 102.5(h)), which sets out a "deemed" date of receipt for communications from the Texas Workers' Compensation Commission which are sent through the mail, claimant is deemed to have received the decision on Monday, December 29th (the first business day following five days after the date of mailing). Fifteen days from this date was January 13, 1998. The appeal, however, was not mailed until January 15, 1998, and was therefore untimely.

The law provides that a hearing officer's decision becomes final when not appealed in time. Section 410.169. Because it is final, we no longer have jurisdiction to review it, and therefore cannot consider the appeal raised by the claimant.

Susan M. Kelley  
Appeals Judge

CONCUR:

Robert W. Potts  
Appeals Judge

Gary L. Kilgore  
Appeals Judge