

APPEAL NO. 980137
FILED MARCH 5, 1998

On December 17, 1997, a contested case hearing (CCH) was held. The CCH 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 issues at the CCH, the appellant (carrier) requests review and reversal of the hearing officer's decision that the respondent's (claimant) cardiac condition, diagnosed as tachycardia, is a result of the _____, compensable injury, and that the carrier waived its right to dispute the compensability of the claimant's cardiac condition. No response was received from the claimant.

DECISION

Determining that the carrier's request for appeal was not timely filed and that the jurisdiction of the Appeals Panel has not been properly invoked, the decision of the hearing officer has 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." Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(c) (Rule 143.3(c)) provides that a request for appeal 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 Texas Workers' Compensation Commission (Commission) not later than the 20th day after the date of receipt of the hearing officer's decision. Rule 102.5(b) provides that, unless otherwise specified by rule, all notices and communications to insurance carriers will be sent to the carrier's Austin representative as provided in Rule 156.1. Rule 156.1(a) provides that each insurance carrier shall designate a person in Austin, Travis County, Texas, as its representative to the Commission, to act as agent for receiving notice from the Commission. Carriers were notified by Commission Advisory 93-11 issued November 4, 1993, that all documents and notices, including CCH decisions, that are required to be provided by the Commission to carriers would be placed in the carrier's Austin representative's box in the Commission's central office and that notice to the carrier for all purposes would be established by this notification.

According to Commission records, the hearing officer's decision was distributed to the parties on December 29, 1997, and the carrier's Austin representative received the decision on December 30, 1997. Receipt of the hearing officer's decision by the carrier's Austin representative is evidenced by his signature on a copy of the cover letter transmitting the decision with the notation that he received the decision on December 30, 1997. Since under Rule 156.1(a) the carrier's Austin representative acts as the carrier's agent for receiving notices from the Commission, receipt of the hearing officer's decision by the carrier's Austin representative is receipt by the carrier. Thus, the carrier received the

hearing officer's decision on December 30, 1997, and it had until Wednesday, January 14, 1998, to file its appeal. The carrier's request for appeal is dated January 19, 1998, and the envelope in which the request was mailed to the Commission is postmarked January 20, 1998. The carrier's request for appeal was received by the Commission on January 22, 1998. Since the request for appeal was not mailed to the Commission on or before January 14, 1998, it was not timely filed with the Commission.

We have held that the timeliness of an appeal is jurisdictional and does not have to be raised by a party to be addressed on appeal. Texas Workers' Compensation Commission Appeal No. 941695, decided January 27, 1995. We have also held that Rule 102.5(h), which provides for a deemed date of receipt five days after the "date mailed," does not control over an earlier signed acknowledgment of receipt. Texas Workers' Compensation Commission Appeal No. 950972, decided August 7, 1995. In addition, we have noted that this appellate body is required to determine its own jurisdiction and to take notice of its want of jurisdiction. Texas Workers' Compensation Commission Appeal No. 93833, decided October 25, 1993. 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:

Philip F. O'Neill
Appeals Judge

Judy L. Stephens
Appeals Judge