

APPEAL NO. 980269
FILED MARCH 23, 1998

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on December 10, 1997, in (City 1), Texas, with (hearing officer) presiding as hearing officer. She determined that the appellant (claimant) did not sustain an injury in the course and scope of his employment on _____; without good cause failed to timely report the claimed injury; and did not have disability. The claimant appeals these determinations, expressing his disagreement with them. The respondent (carrier) replies that the claimant's appeal was untimely and that, in any case, the decision was correct, supported by sufficient evidence, and should be affirmed.

DECISION

Determining that the claimant's 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 in this case was mailed to the claimant on January 13, 1998. The claimant states in his appeal that he "can't remember" when he received the decision. Therefore, pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(h) (Rule 102.5(h)), the claimant is deemed to have received the decision five days after it was mailed. Because this date was a Sunday, the date of receipt is deemed to be Monday, January 19, 1998. Rule 102.3(a)(3). 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" The 15th day after the claimant was deemed to have received the decision was February 3, 1998. The claimant's appeal is undated, but was received at the (City 1) field office of the Commission on February 5, 1998, and mailed to the Central Office in (City 2) on February 6, 1998, where it was date stamped as received on February 9, 1998. Thus, it was not timely filed.

With no timely appeal. The decision and order of the hearing officer have become final pursuant to Section 410.169.

Alan C. Ernst
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Christopher L. Rhodes
Appeals Judge