

APPEAL NO. 980309
FILED MARCH 31, 1998

This appeal is brought pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held in (City), Texas, on November 17, 1997, and January 13, 1998, with (hearing officer) presiding as hearing officer. The appellant (claimant) and the respondent (carrier) stipulated that the claimant sustained a compensable injury to his low back on _____. The hearing officer determined that the carrier contested the compensability of the claimed cervical and thoracic spine and shoulder injuries on or before the 60th day after being notified of them, that the compensable injury is not a producing cause of the claimed cervical and thoracic spine and shoulder injuries, and that the claimant had disability from July 10, 1996, through the date of the CCH. The claimant appealed the determinations that the carrier timely contested the compensability of the claimed cervical and thoracic spine and shoulder injuries and that the compensable injury is not a producing cause of those injuries and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision in his favor on the extent of his injury. The carrier responded, urging that the evidence is sufficient to support the appealed determinations and requesting that the decision of the hearing officer be affirmed.

DECISION

The claimant's request for review was not timely filed and the decision and order of the hearing officer are final. Section 410.169 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.16(f) (Rule 142.16(f)).

The records of the Texas Workers' Compensation Commission (Commission) reflect that the decision of the hearing officer was distributed with a cover letter dated January 23, 1998, and letter was signed for by the carrier on that day. The copy of the letter to the claimant was addressed to the same address that the claimant used as a return address on the envelope in which his appeal was received by the Commission. Records of the Commission do not reveal that the letter was returned to the Commission by the United States Postal Service for any reason.

In his appeal, the claimant stated that he received the decision on "appox 1-29-98" and marked through "appox." There is no explanation for the decision being received on January 29, 1998. See Texas Workers' Compensation Commission Appeal No. 94030, decided February 15, 1995. Rule 102.5(h) provides that the Commission shall deem the received date to be five days after the date mailed. The claimant is deemed to have received the decision on January 28, 1998. Where Commission records show distribution on a particular day to the address confirmed by the claimant as being accurate, a mere statement that the decision was received on a

later date is not sufficient to extend the date of receipt past the deemed date of receipt. Texas Workers' Compensation Commission Appeal No. 94117, decided March 3, 1994.

Section 410.202 provides that a party that desires to appeal the decision of the hearing officer shall file a written request for review 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 Commission's Division of Hearings. The decision was deemed to have been received on January 28, 1998, and the last day for the claimant to file an appeal was February 12, 1998. The claimant's appeal contains a certificate of service dated February 12, 1998; however, the envelope in which the Commission received the appeal contains a postal paid stamp dated February 13, 1998. The appeal of the claimant was not timely filed. Under the provisions of Section 410.169 and Rule 142.16(f), a decision of a hearing officer regarding benefits is final in the absence of a timely appeal.

The jurisdiction of the Appeals Panel was not properly invoked and the decision and order of the hearing officer became final under the provisions of Section 410.169 and Rule 142.16(f). As in Appeal No. 94117, *supra*, we nonetheless reviewed the record, and had the appeal in the case before us been timely filed, the evidence would have been found to be sufficient to support the decision and order of the hearing officer.

Tommy W. Lueders
Appeals Judge

CONCUR:

Alan C. Ernst
Appeals Judge

Christopher L. Rhodes
Appeals Judge