

APPEAL NO. 990030

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 October 20, 1998. She (hearing officer) determined that the respondent's (carrier) insurance policy issued to the employer does not cover the appellant's (claimant) injury of \_\_\_\_\_. The claimant appeals this determination, arguing error as a matter of law. The respondent (carrier) replies that the decision is correct, supported by sufficient evidence, and should be affirmed.

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 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.16(f) (Rule 142.16(f)).

We note initially that the attorney who filed the appeal on the claimant's behalf announced at the CCH that he represented the employer. The claimant was assisted by an ombudsman. Well after the statutory deadline for filing an appeal, a document styled *Supplemental Brief to Request for Review by Appeals Panel* was signed by the claimant, but not by any attorney purporting to represent the claimant, and received by the Clerk of Proceedings on January 25, 1999. Because of its late filing, it will not be considered.

Records of the Texas Workers' Compensation Commission (Commission) reflect that the hearing officer's decision was distributed to the parties on December 4, 1998, with a cover letter of the same date. By letter of December 14, 1998, the Commission distributed the decision and order with an amended cover letter "to correct docket number and claimant's name."<sup>1</sup> Commission records reflect that this amendment was distributed to the parties on December 15, 1998. We will calculate the timeliness of the claimant's appeal from this later date.

According to a Dispute Resolution Information System contact data entry, the claimant's appellate attorney called the Commission on January 8, 1999, to ask if the appeal had been received and advised that the original appeal had been erroneously sent to the carrier and not to the Commission. Claimant's request for review was received by the Clerk of Proceedings on January 8, 1998, by fax of the same date. Pursuant to Rule 102.5(h), the claimant is deemed to have received the decision and order five days after the date it was mailed, or in this case, on December 20, 1998, a Sunday. Because this was a Sunday, the deemed date of receipt is extended to the next day, Monday, December 21, 1998. See Rule 102.3(a)(3). Under Rule 143.3(c) a request for review is timely if it is mailed on or before the 15th day after the deemed date of receipt of the hearing officer's decision and order and received by the Commission no later than the 20th day after the

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<sup>1</sup>We observe that only the docket number, not the claimant's name, appeared to be in error.

deemed date of receipt. The 15th day after December 21, 1998, was Tuesday, January 5, 1999. The claimant's appeal was not mailed to the Commission, but was faxed to and received by the Commission on January 8, 1999. Thus, the appeal was not timely.

Our jurisdiction not having been properly invoked, the hearing officer's decision and order have become final. Section 410.169; Rule 142.16(f).

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Alan C. Ernst  
Appeals Judge

CONCUR:

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Philip F. O'Neill  
Appeals Judge

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Gary L. Kilgore  
Appeals Judge