

APPEAL NO. 990114

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 December 7, 1998. The issues at the CCH were whether the appellant (claimant) sustained a compensable injury, had good cause for failing to timely report an injury, and whether claimant had disability. The hearing officer determined that the claimant did not sustain a compensable injury, did not timely report an injury without good cause, and that he did not have disability. In an unsigned document dated January 12, 1999, in a postmarked envelope bearing a date of January 16, 1999, the claimant appeals the hearing officer's decision dated December 9, 1998. There is no indication that this was ever served on the opposing party and no response has been filed.

DECISION

The apparent attempt to file an appeal is untimely resulting in the decision and order of the hearing officer becoming final pursuant to Section 410.169.

Records of the Texas Workers' Compensation Commission (Commission) show that the decision of the hearing officer was distributed to the parties on December 15, 1998. Under the provisions of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(h) (Rule 102.5(h)) the decision sent by the Commission is deemed to be received five days after the date mailed. Thus, the decision of the hearing officer was deemed to have been received on December 21, 1998, the 20th being a Sunday. Section 410.202 provides that an appeal shall be filed with the Appeals Panel "not later than the 15th day after the date on which the decision of the hearing officer is received" The hearing officer advised the parties on the record of the time limits for filing an appeal before closing the CCH. The final date for filing a timely appeal in this case would be January 5, 1999. The purported appeal is dated January 12, 1999, and was sent in an envelope postmarked January 16, 1999. Thus, under the provisions of Section 410.169, the decision of the hearing officer is final because

of the absence of a timely appeal. Determining that the appeal was not timely filed, as set forth above, the Appeals Panel has no jurisdiction and the decision of the hearing officer has become final. See *generally* Texas Workers' Compensation Commission Appeal No. 92080, decided April 14, 1992.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Elaine M. Chaney
Appeals Judge