

APPEAL NO. 990131

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On December 16, 1998, a hearing was held. She determined that appellant/cross-respondent (claimant) did not sustain a compensable injury on _____, that claimant's cervical spondylosis at C4-5 and midline central herniation at C4-5 result from a prior compensable injury, and that claimant did not have disability. She also found that claimant timely reported the alleged injury. Claimant asserts that respondent/cross-appellant (carrier) denied certain medical testing so that it is not possible to say what condition he was in on _____, and states he has "a disability." Carrier filed a conditional appeal relating to notice and to a finding of fact that said because of "the neck injury" claimant was unable to obtain and retain work at an equivalent wage. Carrier also replied to claimant's appeal.

DECISION

Finding that neither request for appeal was timely filed, the decision and order of the hearing officer are final.

While carrier states that it received a copy of the hearing officer's decision and order on January 4, 1999, the copy of the cover letter in the appeals file under which the decision and order was distributed on December 30, 1998, shows that the carrier's agent signed for a copy on December 31, 1998. See Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 156.1(c) (Rule 156.1(c)). With receipt on December 31, 1998, carrier's conditional appeal, dated and mailed on January 19, 1999, was not filed no later than January 15, 1999, which was 15 days after receipt of the hearing officer's decision and order. See Section 410.202.

Claimant does not state when he received his copy of the decision and order. Therefore Rule 102.5(h) provides that he received his copy five days after it was mailed. With a distribution date of December 30, 1998, claimant is deemed to have received the decision and order no later than January 4, 1999. His appeal is dated February 10, 1999, and the envelope in which it arrived is postmarked February 11, 1999. While Section 410.202 provides for an appeal no later than 15 days after receipt of the hearing officer's decision, we note also that the hearing officer at the end of the hearing specifically called to the parties' attention that an appeal had to be filed within 15 days of receipt of the decision and order.

Claimant does not state that any problem occurred with postal authorities in providing his mail to him. The return address he uses on his appeal is the same address as appears on the decision and order of the hearing officer. We conclude that claimant had through January 19, 1999, to file his appeal. As stated, his appeal was not mailed until February 11, 1999, so it was not timely filed. See *also* Rule 143.3(c) which provides for up to 20 days for an appeal to be received by the Texas Workers' Compensation Commission but only if the appeal was mailed no later than the 15th day after receipt of the hearing officer's decision.

With no timely appeal, the decision and order of the hearing officer are final. See Section 410.169.

Joe Sebesta
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Elaine M. Chaney
Appeals Judge