

APPEAL NO. 990147

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 2, 1998. She (hearing officer) determined that the appellant (claimant) did not sustain a compensable injury; that the date of the claimed injury was _____; and that the claimant did not have disability. The claimant appeals the adverse determinations, urging prejudicial error in the admission of evidence and that the decision is against the great weight and preponderance of the evidence. 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)).

Records of the Texas Workers' Compensation Commission (Commission) reflect that the hearing officer's decision was distributed to the parties on December 30, 1998, with a cover letter of the same date. Claimant's request for review indicates that she received the hearing officer's decision and order on January 6, 1999. Under Rule 102.5(h), the claimant is deemed to have received the decision and order five days after the date it was mailed, that is, on January 4, 1999. A request for review is timely if it is mailed on or before the 15th day after the date of receipt of the hearing officer's decision and if it is received by the Commission not later than the 20th day after the date of receipt of the decision. Rule 143.3(c). In this instance, the 15th day after the deemed date of receipt was Tuesday, January 19, 1999. Claimant's request for review is dated January 19, 1999, but bears a postmark of January 21, 1999, and was received by the Commission on January 26, 1999. The request for review was thus neither timely mailed nor timely received and the appeal is untimely.

In the request for review, the attorney for claimant states that claimant did not receive the hearing officer's decision and order until January 6, 1999. However, there is no explanation offered regarding why claimant received the decision and order s after the deemed date of receipt. The decision and order was mailed to claimant at the address listed on the CCH sign-in sheet. An unexplained statement that a party did not receive a decision and order is not sufficient to extend the date of receipt beyond the deemed date of receipt. Texas Workers' Compensation Commission Appeal No. 94117, decided March 3, 1994.

Accordingly, the hearing officer's decision and order became final pursuant to Section 410.169 and Rule 142.16(f).

Alan C. Ernst
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Thomas A. Knapp
Appeals Judge