

## APPEAL NO. 990170

Following a contested case hearing held in Fort Worth, Texas, on November 18, 1998, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer, resolved the disputed issues by determining that appellant (claimant) did not sustain a compensable injury on \_\_\_\_\_, that the respondent (carrier) timely contested compensability after being notified of the injury, and that claimant did not have disability. Claimant has appealed three findings of fact concerning the injury determination and the amount of temporary income benefits he was paid. The carrier filed a response urging that claimant's appeal is untimely and, alternatively, that the appealed findings are sufficiently supported by the evidence.

### DECISION

Determining that claimant's request for review was not timely filed and that the jurisdiction of the Appeals Panel has thus not been properly invoked, the decision of the hearing officer has become final pursuant to the provisions of Section 410.169.

Records of the Texas Workers' Compensation Commission (Commission) show that the hearing officer's decision was distributed to the parties on December 28, 1998, under cover letter dated December 23, 1998. Claimant's appeal states that he received the decision on January 11, 1999. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(a) (Rule 102.5(a)) provides that all notices and written communications to the claimant or claimant's representative will be mailed to the last address supplied by the claimant or representative. Rule 102.5(h) provides that for purposes of determining the date of receipt for those notices and other written communications which require action by a specific date, the Commission shall deem the received date to be five days from the date mailed. The Appeals Panel has held that where Commission records show mailing on a particular day to the address confirmed by the claimant as being correct, a mere statement that the decision was not received until a later date is not necessarily sufficient to extend the date of receipt past the deemed date of receipt. See *e.g.*, Texas Workers' Compensation Commission Appeal No. 982248, decided November 5, 1998. In claimant's case, the Commission mailed the hearing officer's decision to claimant at the same address he used as the return address in mailing his appeal. He is therefore deemed to have received the hearing officer's decision and order on January 2, 1999.

Section 410.202(a) provides that "[t]o appeal the decision of a hearing officer, a party shall file a written request for appeal 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 division and shall on the same date serve a copy of the request for appeal on the other party." See *also* Rule 143.3(a). Rule 143.3(c) provides that a request for review shall be presumed to be timely filed if it is mailed on or before the 15th day after the date of receipt of the hearing officer's decision and received by the Commission not later than the 20th day after such receipt. Since claimant is deemed to have received the decision on January 2, 1999, a Saturday, applying Rule 102.3(a)(3), which extended the deemed receipt date to Monday,

January 4, 1999, his deadline to appeal was 15 days later, namely, January 19, 1999, a Tuesday. Claimant's appeal was mailed on January 25, 1999, and was received by the Commission on January 28, 1999. Accordingly, the appeal is determined to be untimely and the jurisdiction of the Appeals Panel has not been properly invoked.

Because claimant did not timely file an appeal from the hearing officer's decision, the decision and order have become final pursuant to Section 410.169.

---

Philip F. O'Neill  
Appeals Judge

CONCUR:

---

Joe Sebesta  
Appeals Judge

---

Elaine M. Chaney  
Appeals Judge