

APPEAL NO. 990213

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On December 10, 1998, a hearing was held. He (hearing officer) closed the record on January 6, 1999, and determined that respondent (claimant) sustained a compensable low back injury on _____, that claimant complied with notice requirements, and that claimant had disability from February 16, 1998, through December 10, 1998, the date of the hearing. Appellant (carrier) asserts that there was no actual knowledge of an injury and that a finding of good cause for late notice is against the great weight of the evidence. The finding of disability is primarily attacked because of claimant's ability to continue working for seven months after the accident, and carrier also states that back pain was not shown to emanate from an incident on _____. Claimant replied that the decision should be affirmed.

DECISION

Finding that the request for appeal was not timely filed, the decision and order of the hearing officer are final.

The decision and order of the hearing officer were distributed on January 13, 1999, by cover letter dated January 13, 1999. Stamped on the Texas Workers' Compensation Commission's (Commission) copy of such cover letter and decision is a signed receipt for that decision by carrier's Austin representative dated "1-14-99." With Section 410.202 requiring that a written request for review be filed not later than the 15th day after the decision was received, the carrier had through January 29, 1999, to file an appeal. See *also* Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(c) (Rule 143.3(c)), which states that an appeal is presumed to be timely filed when mailed on or before the 15th day after receipt of the hearing officer's decision, and when thereafter received by the Commission no later than 20 days after that receipt of the hearing officer's decision.

The request for appeal is dated January 29, 1999, but the postmark on the envelope shows January 30, 1999. The certificate of service also states that a copy of the appeal was mailed to claimant on January 30, 1999. We conclude that the request for appeal was filed later than January 29, 1999, and was untimely.

The timeliness of an appeal is jurisdictional and does not have to be raised by a party to be addressed on review. See Texas Workers' Compensation Commission Appeal No. 941695, decided January 27, 1995. Carrier's attorney states that the decision was received on January 18, 1999; we do not doubt that the attorney filing the appeal did not receive a copy until that date. Nevertheless, the date a party receives the decision, including through its Austin representative, begins the 15-day period for appeal, not the date the attorney for the party receives the decision. See Appeal No. 941695, *supra*. See *also* Rule 156.1(a) and (c). While Rule 102.5(h) provides for a deemed date of receipt five days after the "date mailed," that provision does not control over an earlier signed

acknowledgment of receipt. *See generally*, Texas Workers' Compensation Commission Appeal No. 92036, decided March 11, 1992.

With no timely appeal, the decision and order of the hearing officer are final. See Sections 410.202 and 410.169.

Joe Sebesta
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Gary L. Kilgore
Appeals Judge