

## APPEAL NO. 990214

On December 28, 1998, a contested case hearing (CCH) was held. The hearing was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). The appellant (carrier) appealed the hearing officer's determinations that the employer did not make a bona fide offer of light duty and that the respondent (claimant) had disability. Claimant responds that the Appeals Panel should affirm the hearing officer's decision and order.

### DECISION

The carrier's request for review was not timely filed. Therefore, the hearing officer's decision is final. See Sections 410.169 and 410.202.

Records of the Texas Workers' Compensation Commission (Commission) show that the decision and order of the hearing officer was distributed on Wednesday, January 6, 1999, by cover letter dated that same date. Such distribution to the carrier was to its Austin representative, via a designated box in the Commission's central office. See Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(b) (Rule 102.5(b)); Rule 156.1; see *also* TWCC Advisory 93-11, dated November 4, 1993. Attached to the Commission's copy of such letter and decision is a signed receipt therefore by the carrier's Austin representative dated January 7, 1999. Because Section 410.202 provides that a request for review must be filed no later than the 15th day after the decision is received by a party, the carrier had until Friday, January 22, 1999, to file (or mail) the appeal. The carrier's request for review, dated January 25, 1999, was hand delivered to the Commission on January 26, 1999. The request for review was untimely because it was not mailed or filed on or before January 22, 1999.

The timeliness of an appeal is jurisdictional and does not have to be raised by a party to be addressed on review. Texas Workers' Compensation Commission Appeal No. 941695, decided January 27, 1995. The date a party receives the decision, including through its Austin representative, begins the 15-day period for appeal. Texas Workers' Compensation Commission Appeal No. 93353, decided June 21, 1993. In addition, Rule 102.5(h), which provides for a deemed date of receipt after the date mailed, does not control over an earlier, signed acknowledgement of receipt. See *generally* Texas Workers' Compensation Commission Appeal No. 92036, decided March 11, 1992. Carrier states that it did not receive the decision and order until January 11, 1999, however, as stated before, there is a signed receipt from carrier's Austin representative, showing delivery via a designated box in the Commission's central office.

Based upon the absence of a timely appeal, the decision and order of the hearing officer have become final pursuant to Section 410.169.

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Judy Stephens  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Philip F. O'Neill  
Appeals Judge