

APPEAL NO. 990312

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On January 14, 1999, a contested case hearing was held. With regard to the issues before him, the hearing officer determined that appellant (claimant) had not sustained a compensable (left shoulder) injury on _____, that claimant had not timely reported his injury to the employer and did not have good cause for failing to do so and that because claimant did not have a compensable injury, claimant could not, by definition, have disability.

Claimant appeals, disputing some of the hearing officer's findings, alleging good cause for not timely reporting his injury and alleging that he had sustained a work-related injury and had disability. Claimant requests that we reverse the hearing officer's decision and render a decision in his favor. Respondent (carrier) responds, urging affirmance.

DECISION

The appeal in this case was not timely filed and the decision and order of the hearing officer have become final. See Sections 410.169 and 410.202.

The decision of the hearing officer was forwarded to the parties by cover letter dated January 22, 1999, and distributed that same date. The carrier signed for its copy of the decision on Monday, January 25, 1999. Inexplicably, claimant, in his appeal, states that he did not receive the decision until Wednesday, February 3, 1999. In such a case, we apply the provisions of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(h) (Rule 102.5(h)). That rule provides that the deemed date of receipt of notices or other written communications which require action by a specific date to be five days after the date mailed. In this case, the deemed receipt date is Wednesday, January 27, 1999.

Section 410.202 provides that an appeal, to be timely, must be filed with the Appeals Panel "not later than the 15th day after the date on which the decision of the hearing officer is received" If the deemed receipt date is January 27, 1999, 15 days from that date would be February 11, 1999, which would be the statutory date by which the appeal must be filed. Claimant's appeal was sent by facsimile transmission, and received on February 16, 1999, with a second copy postmarked on February 16, 1999. In that the appeal was filed beyond the statutory 15 days accorded in Section 410.202 (being after February 11, 1999), claimant's appeal is untimely.

Section 410.169 states the decision of the hearing officer is final in the absence of a timely appeal. Determining that the appeal was not timely filed, as set forth above, we have no jurisdiction to review the hearing officer's decision. Accordingly, the hearing officer's decision and order have become final.

Thomas A. Knapp
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Tommy W. Lueders
Appeals Judge