

APPEAL NO. 990352

This appeal is brought pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 11, 1999. The hearing officer determined that Dr. K certified that the appellant (claimant) reached maximum medical improvement (MMI) on November 14, 1997, with a zero percent impairment rating (IR); that that certification by Dr. K was the first certification of MMI and IR; that the claimant was notified of Dr. K's first certification of MMI and IR on February 23, 1998; that the claimant disputed the first certification of MMI and IR on May 28, 1998; that the dispute of the first certification of MMI and IR was more than 90 days after the notification; and that the first certification of MMI and IR became final under the provisions of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)). The claimant appealed; stated that he was not notified of the first certification of MMI and IR until May 28, 1998, and that he was improperly diagnosed; and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision that the first certification of MMI and IR did not become final. At the hearing, the claimant contended that a friend signed for the certified letter advising of the first certification, misplaced the letter, and did not give it to him. A reply from the respondent (carrier) has not been received.

DECISION

The claimant's request for review was not timely filed and the decision and order of the hearing officer have become final.

The records of the Texas Workers' Compensation Commission (Commission) reflect that the decision of the hearing officer was distributed on January 27, 1999, with a letter dated that same day. The appeal form used by the claimant has spaces for the claimant to insert the date the decision of the hearing officer was received. The appeal filed by the claimant contained "31 day of January, 1999." "31" and "January" were struck through, and "3" and "February" were inserted near where the other entries had been struck. The decision of the hearing officer was sent to the address that the claimant used as his return address on the envelope in which his appeal was mailed to the Commission. The decision was not returned to the Commission by the United States Postal Service. The appeal does not contain an explanation of why the decision was not received until February 3, 1999. Rule 102.5(h) provides that the Commission shall deem the received date to be five days after the date mailed. The claimant is deemed to have received the hearing officer's decision on February 1, 1999. Section 410.202 provides that a party who desires to appeal the decision of the hearing officer shall file a written request for review 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 Commission's Division of Hearings. The last day for the claimant to file an appeal was February 16, 1999. The claimant's appeal is dated February 18, 1999; was mailed on that day; and was not timely filed. Under the provisions of Section 410.169 and Rule 142.16(f) a decision of a hearing officer regarding benefits is final in the absence of a timely appeal.

The jurisdiction of the Appeals Panel was not properly invoked and the decision and order of the hearing officer became final under the provisions of Section 410.169 and Rule 142.16(f).

Tommy W. Lueders
Appeals Judge

Philip F. O'Neill
Appeals Judge

Thomas A. Knapp
Appeals Judge