

APPEAL NO. 990365

This appeal arises 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 7, 1999. The issues at the CCH were timely contest of compensability, injury, and disability. The hearing officer determined that the respondent (carrier) properly contested compensability, that the appellant (claimant) did not sustain a compensable lower back injury lifting boxes on \_\_\_\_\_, and that the claimant does not have disability. The claimant appeals, urging that the hearing officer erred in applying the law on the issue of contest of compensability and that the hearing officer's determinations as to injury and disability are against the great weight of the evidence. The claimant asks that the Appeals Panel reverse the decision of the hearing officer. The carrier replies that claimant's appeal is untimely. The carrier also urges that the hearing officer's decision on compensability was correct and, if not, waiver cannot create an injury where the hearing officer determines there was none. The carrier urges that the hearing officer's determinations on injury and disability are supported by the evidence and asks that the hearing officer's decision be affirmed.

DECISION

A timely appeal not having been filed, the decision and order of the hearing officer have become final pursuant to Section 410.169.

Records of the Texas Workers' Compensation Commission (Commission) show that the decision of the hearing officer was mailed to the claimant on January 28, 1999, with a cover letter of the same date. Pursuant to Section 410.202 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(c) (Rule 143.3(c)), an appeal, to be timely, must be filed or mailed not later than the 15th day after the date of receipt of the hearing officer's decision. Under Rule 102.5(h), the claimant is deemed to have received the decision and order of

the hearing officer five days after it was mailed, or on February 2, 1999. Thus, the last day to timely file an appeal was February 17, 1998. The envelope in which the claimant's appeal was sent to the Commission shows that although the postage meter date is February 17, 1999, the appeal was not postmarked until February 18, 1999. Accordingly, the appeal was untimely, the jurisdiction of the Appeals Panel was not properly invoked, and the decision and order of the hearing officer became final under Section 410.169.

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Elaine M. Chaney  
Appeals Judge

CONCUR:

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Joe Sebesta  
Appeals Judge

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Susan M. Kelley  
Appeals Judge