

APPEAL NO. 990456

Following a contested case hearing held on January 21, 1999, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer resolved the disputed issues by determining that the appellant's (claimant) compensable injury of _____, does not extend to and include lumbar degenerative disc disease and lumbar radiculopathy, and that claimant did not have disability resulting from the injury sustained on _____, from July 28, 1998, through the date of the hearing. Claimant has appealed the hearing officer's extent of injury and disability determinations for insufficiency of the evidence to support them. The respondent (carrier) urges in its response that the evidence is sufficient to support the challenged findings and conclusions.

DECISION

Determining that the request for review was not timely filed and that the jurisdiction of the Appeals Panel has not been properly invoked, the decision of the hearing officer has become final pursuant to Section 410.169.

Records of the Texas Workers' Compensation Commission (Commission) reflect that the hearing officer's decision was distributed to the parties on February 3, 1999, under a cover letter of the same date. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(h) (Rule 102.5(h)) provides that for purposes of determining the date of receipt for those notices and other written communications which require action by a specific date after receipt, the Commission shall deem the received date to be five days after the date mailed. Claimant is therefore deemed to have received the hearing officer's decision and order on February 8, 1999, a Monday. Section 410.202(a) provides that "[t]o appeal the decision of a hearing officer, a party shall file a written request for appeal 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 division and shall on the same date serve a copy of the request for appeal on the other party." See *also* Rule 143.3(a). Rule 143.3(c) provides that a request for review shall be presumed to be timely filed if it is mailed on or before the 15th day after the date of receipt of the hearing officer's decision and is received by the Commission not later than the 20th day after such receipt. Since claimant is deemed to have received the decision on February 8, 1999, her deadline to appeal was 15 days later, namely, February 23, 1999, a Tuesday. The 20th day was February 28, 1999. However, since February 28, 1999, was a Sunday, the deadline for receipt of the appeal by the Commission extended to Monday, March 1, 1999, by the provisions of Rule 102.3(a)(3). The envelope in which claimant's appeal was mailed reflects that although claimant attempted to mail her appeal on February 22, 1999, by certified mail, it was returned for additional postage; that it was remailed with the additional postage on March 1, 1999; and that it was received by the Commission on March 4, 1999.

Since the effective mailing date, March 1, 1999, was beyond the 15th day after claimant received the hearing officer's decision, or February 23, 1999, and since the date of receipt of claimant's appeal by the Commission was beyond the 20th day, extended to the

21st day, or March 1, 1999, claimant's appeal was not timely filed and the jurisdiction of the Appeals Panel has not been properly invoked.

Because claimant did not timely file an appeal from the hearing officer's decision, the decision and order have become final pursuant to Section 410.169.

Philip F. O'Neill
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Tommy W. Lueders
Appeals Judge