

APPEAL NO. 990521

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on January 19, 1999. The issues at the CCH were whether the appellant (claimant) sustained a compensable injury in the form of an occupational disease on \_\_\_\_\_, and whether the claimant had disability. The hearing officer determined that on \_\_\_\_\_, the claimant did not sustain a compensable injury in the form of an occupational disease and the claimant has not had disability. The claimant appeals, urging that she did injure herself, that she has disability and requests that we reverse the hearing officer's decision. The respondent (carrier) replies that the claimant failed to timely file her request for review with the Appeals Panel and additionally urges that the hearing officer's decision is correct, supported by sufficient evidence, and should 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.

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. Records of the Texas Workers' Compensation Commission (Commission) show that the hearing officer's decision was mailed to the claimant on January 27, 1999, with a cover letter dated January 27, 1999. In her appeal, the claimant states "my mail was sent to the wrong address and the post office had to bring it back out to [sic, the] correct address, not for sure how long mail was at (address) instead of (address), a very old lady live there, and not for sure how long she had my mail." The claimant did not indicate in her appeal when she allegedly received the decision and order, nor was there any supporting documentation to establish that the post office incorrectly delivered the claimant's decision and order.

Under Rule 102.5(a), all notices and written communications to the claimant or claimant's representative will be mailed to the last address supplied by the claimant or representative. Rule 102.5(h) provides that the claimant is deemed to have received the decision and order of the hearing officer five days after it was mailed. The Appeals Panel has held many times that where the Commission records show distribution on a particular day to the address confirmed by the claimant as being accurate, a mere statement that the decision was not received in the mail is not sufficient to extend the date of the receipt past the deemed date of receipt established by Rule 102.5(h). See *e.g.*, Texas Workers' Compensation Commission Appeal No. 982248, decided November 5, 1998.

In the claimant's case, the Commission mailed the hearing officer's decision to the claimant at the correct address, address 1. It is noted that the claimant's return address in mailing her appeal is address 2. The claimant is deemed to have received the hearing officer's decision and order on February 1, 1999, a Monday. With the deemed date

received being February 1, 1999, the last day to timely file an appeal was February 16, 1999, a Tuesday. The claimant's appeal was mailed on March 9, 1999, and was received by the Commission on March 11, 1999. Accordingly, the appeal is determined to be untimely and the jurisdiction of the Appeals Panel has not been properly invoked.

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

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Dorian E. Ramirez  
Appeals Judge

CONCUR:

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Stark O. Sanders, Jr.  
Chief Appeals Judge

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Philip F. O'Neill  
Appeals Judge