

APPEAL NO. 990543

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 August 11, 1998; August 27, 1998; November 19, 1998; November 20, 1998; and December 11, 1998. The record closed on February 16, 1999. The issues at the CCH were: (1) what is the date of injury; (2) did respondent (claimant) sustain a compensable occupational disease injury; (3) did claimant timely report his injury to his employer; (4) did claimant have disability; (5) was claimant's employer "self-insured from October 15, 1997, through January 15, 1998"; and (6) did claimant's employer, if found to be self-insured, timely dispute the compensability of this claim. The hearing officer determined that: (1) the date of injury is _____; (2) claimant did not sustain an occupational disease injury; (3) claimant timely reported his alleged injury to his employer; (4) claimant did not have disability; and (5) claimant's employer was not self insured on the dates in question. The hearing officer stated that the last issue was moot because the claimant's employer is not self insured. Appellant (carrier) appeals, contending that the hearing officer erred in making her determinations regarding date of injury and timely reporting. The file contains no response from the claimant.

DECISION

The carrier's request for review was not timely filed. Therefore, the hearing officer's decision is final. See Sections 410.169 and 410.202.

Records of the Commission show that the decision and order of the hearing officer was distributed to the parties by cover letter dated February 23, 1999. Such distribution to the carrier was to its (City 1) representative, via a designated box in the Commission's central office. See Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(b) (Rule 102.5(b)) and Rule 156.1; see *also* TWCC Advisory 93-11, dated November 4, 1993. Exhibited on the Commission's copy of such letter and decision is a signed receipt therefore by the carrier's (City 1) representative dated February 24, 1999. Because Section 410.202 provides that a request for review must be filed no later than the 15th day after the decision is received by a party, carrier had until Thursday, March 11, 1999, to file its appeal. The carrier's request for review was postmarked Friday, March 12, 1999. The request for review could not have been mailed before March 12, 1999, because the certificate of service was not signed until that date. Nothing in the file indicates that a copy of the request for review was timely faxed or hand delivered. In the request for review, carrier contends that it did not receive the hearing officer's decision and order until February 25, 1999. Again, however, exhibited on the Commission's copy of such letter and decision is a signed receipt therefore by the carrier's (City 1) representative, dated February 24, 1999. The request for review was date stamped as received by the Commission on March 15, 1999. Therefore, the request for review was untimely under Section 410.202.

The date a party receives the decision, including through its (City 1) representative, begins the 15-day period for appeal. Texas Workers' Compensation Commission Appeal

No. 93353, decided June 21, 1993. Rule 102.5(h), which provides for a deemed date of receipt after the date mailed, does not control over an earlier, signed acknowledgment of receipt. See *generally* Texas Workers' Compensation Commission Appeal No. 92036, decided March 11, 1992.

We would note that carrier was not aggrieved by the decision because the hearing officer determined that claimant did not sustain a compensable injury. The appeals file does not contain an appeal from claimant in this case.

Based upon the absence of a timely appeal, the decision and order of the hearing officer have become final pursuant to Section 410.169.

Judy Stephens
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Philip F. O'Neill
Appeals Judge