

## APPEAL NO. 990581

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On February 10, 1999, a hearing was held. The issue involved whether the first impairment rating (IR) assigned to the appellant (claimant) for her injury became final, under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e)(Rule 130.5(e)).

The hearing officer determined that the first IR became final because it was not disputed within 90 days, and that there was no compelling evidence of a condition that would obviate finality.

The claimant has appealed, arguing that the decision is against the great weight and preponderance of the evidence. The respondent (self-insured) argues that it is supported by the record and applicable Appeals Panel decisions.

### DECISION

Finding that the request for review was not timely filed, the decision and order of the hearing officer are final.

The decision and order of the hearing officer were distributed on February 19, 1999, by cover letter dated February 19, 1999. The claimant is deemed to have received her copy by February 24, 1999, by operation of Rule 102.5(h). With Section 410.202 requiring that an appeal be filed not later than the 15th day after the decision was received, the claimant had through March 11, 1999, to file an appeal.

While the appeal is dated March 9, 1999, and shows a postage meter stamp of that date, the post office postmark is dated March 16, 1999. It appears that the certified mail postage amount may initially have been incorrect, as an extra 20 cents was added by the post office on March 16, 1999. The Texas Workers' Compensation Commission in Austin received the appeal on March 19, 1999. We conclude that the request for appeal was filed actually after March 11, 1999, and was thus untimely. It is the postmark, and not the meter date, which controls. See Texas Workers' Compensation Commission Appeal No. 990456, decided April 12, 1999, (Unpublished).

The timeliness of an appeal is jurisdictional and does not have to be raised by a party to be addressed on review. See Texas Workers' Compensation Commission Appeal No. 941695, decided January 27, 1995. With no timely appeal, the decision and order of the hearing officer are final. See Sections 410.202 and 410.169.

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Susan M. Kelley  
Appeals Judge

CONCUR:

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Robert W. Potts  
Appeals Judge

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Dorian E. Ramirez  
Appeals Judge