

APPEAL NO. 990683

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 March 4, 1999. The issue at the CCH was whether the respondent (carrier) is liable for spinal surgery related to the \_\_\_\_\_, injury of the appellant (claimant). The hearing officer determined that the carrier is not liable for the expense of spinal surgery at this time because there is no concurring second opinion to the recommendation for spinal surgery. The claimant appeals, urging that she needs the surgery because she continues to have pain, which is getting worse, and that her body has become immune to her medication. The carrier replies that neither the carrier's second-opinion doctor nor the claimant's second-opinion doctor concurred in the treating doctor's recommendation for surgery and that the great weight of the medical evidence is not contrary to the two nonconcurring opinions. The carrier urges that the hearing officer's decision 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.

Records of the Texas Workers' Compensation Commission (Commission) show that the decision of the hearing officer was mailed to the claimant on March 11, 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.

The claimant indicates that she received the decision and order of the hearing officer on March 13, 1999. Thus, the last day to timely file an appeal would be March 29, 1999 (March 28, 1999, falling on a Sunday, see Rule 102.3(a)(3)). While the claimant's certificate of service recites service on March 29, 1999, the envelope in which the claimant's appeal was mailed has a metered stamp reciting a date of March 30, 1999, and the U. S. Postal Service postmark superimposed over that metered date is illegible. Thus, 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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Dorian E. Ramirez  
Appeals Judge

CONCUR:

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Stark O. Sanders, Jr.  
Chief Appeals Judge

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Tommy W. Lueders  
Appeals Judge