

APPEAL NO. 990690

Following a contested case hearing held on February 22, 1999, with the record closing on March 2, 1999, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer, resolved the sole disputed issue by determining that the appellant (claimant) did not sustain a compensable injury on _____. Claimant has appealed, urging the insufficiency of the evidence to support the hearing officer's determination and arguing the evidence favorable to his position. The respondent (carrier) has replied, urging both the sufficiency of the evidence and the untimeliness of claimant's appeal.

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 March 8, 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. However, since the fifth day after the Commission's mailing fell on March 13, 1999, a Saturday, claimant is deemed to have received the decision on Monday, March 15, 1999. See Rule 102.3(a)(3).

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 March 15, 1999, his deadline to appeal was 15 days later, namely, March 30, 1999, a Tuesday. Claimant's appeal was both mailed and transmitted by electronic facsimile transfer on April 1, 1999. Accordingly, the appeal is determined to be untimely 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

Judy L. Stephens
Appeals Judge