

APPEAL NO. 990809

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 3, 1999. The issues at the CCH were whether the appellant (claimant) sustained a compensable injury on _____, and whether the claimant had disability. The hearing officer determined that the claimant sustained a compensable injury on _____, and had disability from September 29, 1998, through November 9, 1998. The claimant appeals, urging that disability did not end on November 9, 1998. 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 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 March 15, 1999, with a cover letter dated March 15, 1999. In her appeal, the claimant states:

Please excuse the time limitation (although your letter never mentioned a deadline for my response). I had a death in our family. My father passed away and we buried him out of town. When I returned my mail was also delayed in reaching our new address as we had also moved prior to my losing my Dad.

The claimant did not indicate in her appeal when she actually received the decision and order. The claimant has a notation on the bottom of the cover letter which states: "(This letter does not show a date or deadline for Appeal.)" Also attached to the claimant's appeal is a letter from Dr. S dated April 13, 1999.

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. In this case, the Commission mailed the hearing officer's decision to the claimant at address 1. It is noted that the claimant's return address in mailing her appeal is address 2. There is no evidence to show that the claimant ever notified the Commission of any change of address or that the Commission in any way improperly addressed the claimant's copy of the hearing officer's decision. Although the claimant had a death in her family, the Appeals Panel

cannot grant an extension of time for the filing of a request for review because we lack any authority to do so under the 1989 Act. Texas Workers' Compensation Commission Appeal No. 952111, decided January 24, 1996.

The claimant is deemed to have received the hearing officer's decision and order on March 22, 1999. With the deemed date received being March 22, 1999, the last day to timely file an appeal was April 6, 1999. The claimant's appeal was mailed on April 13, 1999, and was received by the Commission on April 16, 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.

Dorian E. Ramirez
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Alan C. Ernst
Appeals Judge