

APPEAL NO. 990869

This appeal is brought pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was convened on January 5, 1999, the attorney representing the appellant (claimant) stated that the claimant was unable to attend the hearing because he was in a hospital and requested a continuance; the request for a continuance was not opposed; and the hearing officer granted a continuance. The CCH was again convened on March 11, 1999. The claimant filed two claims, alleging that he sustained closed head injuries on (date of injury for Docket No. 2), and (date of injury for Docket No. 1), and that he had disability as the result of those injuries. One CCH was held to resolve the disputed issues related to those two claims. At the CCH, the claimant orally withdrew the claim alleging an injury on (date of injury for Docket No. 1). The hearing officer determined that on (date of injury for Docket No. 2), the claimant sustained an injury in the course and scope of his employment; that the claimant reported the injury to his employer on that day; that the injury sustained in the course and scope of employment does not extend to or include a closed head injury; that since November 1, 1998, the claimant has been unable to earn the wages he earned before (date of injury for Docket No. 2), because of the symptoms from a closed head injury; and that since the claimant's compensable injury does not include a closed head injury, he did not have disability. The claimant appealed, urged that the determinations that the claimant's compensable injury sustained on (date of injury for Docket No. 2), does not include a closed head injury and that he does not have disability are against the great weight and preponderance of the evidence. The respondent (carrier) replied, urged that the appealed determinations of the hearing officer are not against the great weight and preponderance of the evidence, and requested that the decision of the hearing officer be affirmed.

DECISION

The claimant's request for review was not timely filed and the decision and order of the hearing officer are final.

The records of the Texas Workers' Compensation Commission (Commission) reflect that the decision of the hearing officer was distributed on March 25, 1999. The claimant does not state when he received the decision. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(h) (Rule 102.5(h)) provides that the Commission shall deem the received date to be five days after the date mailed. The claimant is deemed to have received the hearing officer's decision on March 30, 1999. Section 410.202 provides that a party that desires to appeal the decision of the hearing officer shall file a written request for review 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 Commission's Division of Hearings. Rule 143.3(a) provides that an appeal shall be filed with the Commission's central office in (City 2), and Rule 143.3(c) provides that an appeal 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 if it is received by the Commission not later than the 20th day after the date of receipt of the hearing officer's decision. In Texas Workers' Compensation Commission Appeal No. 951375, decided August 16, 1995, the Appeals Panel stated that an appeal may be filed in a field office, but that a party filing an appeal in a field office risks the appeal not being received by the Appeals Panel in time for a decision to be rendered within the statutory 30-day time limit. The last day for the claimant to file an appeal was April 14, 1999. The claimant's appeal is undated, but has a certificate of service stating:

I hereby certify that I have this 8th day of April 1999, served a copy of the attached Notice of Appeal on Texas Workers' Compensation Fund by mail:

Andrew Price
FULBRIGHT & JAWORSKI, L.L.P.
1301 McKinney, Ste. 5100
[City 1], TX 77010-3095

Texas Workers' Compensation Fund
P O Box 12029
Austin, TX 78711-2029

Texas Workers' Compensation Co.
1445 North Loop West, Ste. 600
[City 1], TX 77008

A response from the carrier dated April 21, 1999, was received by the Commission on April 23, 1999. A Commission employee who handles appeals files noted that a copy of the appeal had not been received, called the attorney representing the claimant, and the attorney faxed a copy of the appeal to the Division of Hearings in the Commission's central office in (City 2) on April 23, 1999. On May 24, 1999, the field office handling the claim in City 1 was asked to search its files to determine whether the appeal had been received. It responded that a copy of the appeal could not be located. The appeal was not timely mailed by the claimant to the Commission not later than 15 days after it was received, was not received by the Commission not later than 20 days after it was received by the claimant, and was not timely filed. Under the provisions of Section 410.169 and Rule 142.16(f), a decision of a hearing officer regarding benefits is final in the absence of a timely appeal.

In view of the short time in which to decide the appeal, the tapes were listened to and the documents admitted into evidence were reviewed while the field office handling the claim searched for the appeal. Had a timely appeal been filed, the evidence is sufficient to support the appealed determinations of the hearing officer and his decision and order.

The jurisdiction of the Appeals Panel was not properly invoked and the decision and order of the hearing officer became final under the provisions of Section 410.169 and Rule 142.16(f).

Tommy W. Lueders
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Elaine M. Chaney
Appeals Judge