

APPEAL NO. 991027

Following a contested case hearing held on March 25, 1999, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer, resolved the disputed issues by finding that the report of the designated doctor is not contrary to the great weight of the medical evidence and by concluding, based on that report, that the appellant (claimant) reached maximum medical improvement (MMI) on October 16, 1997, with an impairment rating of four percent. Claimant has appealed the MMI determination, urging that his treating doctor felt he could obtain further improvement from additional treatment and that the designated doctor agreed with the treating doctor in that regard. The respondent (carrier) asserts in response that claimant's appeal is untimely and, in the alternative, that the evidence is sufficient to support the challenged determination.

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 the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 410.169 (1989 Act).

Records of the Texas Workers' Compensation Commission (Commission) show that the hearing officer's decision was distributed to the parties on April 8, 1999, under cover letter of that date. Claimant's appeal states that "[t]he decision was presumed received on April 13, 1999" and that "[t]his appeal is filed on April 28, 1999, within fifteen days." 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 of its written communications to be five days from the date mailed. Accordingly, claimant is deemed to have received the decision on April 13, 1999.

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). Since claimant is deemed to have received the hearing officer's decision on April 13, 1999, his deadline to appeal was 15 days later, that is, April 28, 1999, a Wednesday. Claimant's appeal was sent by electronic document transfer to the Commission on May 12, 1999, and was received on that date. 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

Robert W. Potts
Appeals Judge