

## APPEAL NO. 991032

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 April 7, 1999. The issues at the CCH were maximum medical improvement (MMI), impairment rating (IR), applicability of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)), and extent of injury. The hearing officer determined that the first certification of MMI and IR became final under Rule 130.5(e), the appellant (claimant) reached MMI on August 5, 1998, with an IR of zero percent, and the compensable injury of \_\_\_\_\_, extended to and included a herniated disc at L5-S1 and a bulging disc at L4-5. The claimant appeals, contending that he had a new, undiagnosed medical condition and had good cause for his delay in contesting the company doctor's certification of MMI and IR. He asks that the Appeals Panel reverse the decision and order of the hearing officer and render a decision that the first IR did not become final due to a misdiagnosed condition. The carrier (respondent) responds that the claimant's request for review is untimely and was filed with the (City) field office rather than with the Chief Clerk of the Hearings Division, that the evidence discussed in the response supports the hearing officer's decision, that there is no good cause exception to Rule 130.5(e), and that the decision of the hearing officer 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 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 April 23, 1999, with a cover letter dated April 23, 1999. The claimant states that he received the hearing officer's decision on April 29, 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. The Appeals Panel has held that, where Commission records show mailing on a particular day to the address confirmed by the claimant as being correct, a mere statement that the decision was not received until a later date is not necessarily sufficient to extend the date of receipt past the deemed date of receipt. Texas Workers' Compensation Commission Appeal No. 990170, decided March 18, 1999 (Unpublished); Texas Workers' Compensation Commission Appeal No. 982248, decided November 5, 1998. The claimant's request for review was filed with the Commission's (City) field office on May 14, 1999, and is so stamped. The certificate of service recites service on the carrier on May 14, 1999. While the request for review was mailed and electronically sent by the Commission's (City) field office to the

Hearings Division and does not show the claimant's return address, the Commission's records show the claimant's address to be the one to which the hearing officer's decision was sent, and the file contains a copy of an Employee's Request to Change Treating Doctors (TWCC-53) with the same address and the claimant's signature, dated December 21, 1998. Hearing Officer's Exhibit No. 2. The hearing officer's appearance sheet for the CCH shows the same address for the claimant. Under Rule 102.5(h), the claimant is deemed to have received the hearing officer's decision on Wednesday, April 28, 1999, five days after it was mailed. The claimant had 15 days, or until Thursday, May 13, 1999, to mail his request for review to the Commission. The claimant filed his request for review with the Commission's (City) field office on May 14, 1999. Thus, under Section 410.169, we must find that the decision of the hearing officer is final.

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Stark O. Sanders, Jr.  
Chief Appeals Judge

CONCUR:

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Joe Sebesta  
Appeals Judge

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Robert W. Potts  
Appeals Judge