

APPEAL NO. 991047

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 18, 1999. With respect to the issues before her, the hearing officer determined that the appellant (claimant) did not sustain an injury in the course and scope of his employment on _____; that he did not timely report his alleged injury to his employer, without good cause for his failure to do so; and that he did not have disability. In his purported appeal, the claimant essentially argues that those determinations are against the great weight of the evidence. In its response, the respondent (carrier) urges affirmance.

DECISION

Determining that the claimant's appeal was not timely filed and that the jurisdiction of the Appeals Panel has not been properly invoked, the hearing officer's decision and order have become final pursuant to Section 410.169 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.16(f) (Rule 142.16(f)).

Records of the Texas Workers' Compensation Commission (Commission) show that the hearing officer's decision was distributed to the parties on April 14, 1999, with a cover letter of the same date. The claimant asserts in his appeal that he received the hearing officer's decision and order on April 19, 1999. Section 410.202 and Rule 143.3(c) provide that a request for review is timely if it is filed on or before the 15th day after the date of receipt of the hearing officer's decision and received by the Commission not later than the 20th day after the date of receipt. In this instance, the 15th day after the date of receipt was Tuesday, May 4, 1999, and the 20th day fell on Sunday, May 9, 1999. In accordance with Rule 102.3(a)(3), the 20-day period extends to Monday, May 10, 1999, since the last day of that period was a Sunday. We have previously stated that both portions of Rule 143.3(c) must be complied with in order for an appeal to be timely filed. Texas Workers' Compensation Commission Appeal No. 94111, decided March 10, 1994; Texas Workers' Compensation Commission Appeal No. 94065, decided March 1, 1994. The claimant's appeal, which is dated April 21, 1999, was sent to the Commission by United Parcel Service (UPS). It was not received by the Commission until May 17, 1999. The appeal was forwarded to the Commission by the Texas Workforce Commission, to whom the appeal was delivered on April 29, 1999. In Appeal No. 94065, *supra*, we held that where a party's appeal is received much later than it was sent due to other than the party's own actions, the appeal is nevertheless untimely if it is not received within the 20-day period. In Appeal No. 94065, we noted that the service chosen by the party to deliver the appeal to the Commission, UPS in this case, becomes the agent of the party and any negligence on the part of the agent chosen by the party is attributable to the party. See also Texas Workers' Compensation Commission Appeal No. 960944, decided June 18, 1996 (Unpublished); Texas Workers' Compensation Commission Appeal No. 960774, decided June 4, 1996 (Unpublished); Texas Workers' Compensation Commission Appeal No. 941541, decided December 21, 1994 (Unpublished); and Texas Workers' Compensation Commission Appeal No. 94310, decided April 28, 1994, for other cases where the appeal

was held to be untimely under similar factual circumstances. The claimant's appeal was received by the Commission on May 17, 1999, beyond the May 10, 1999, deadline and is, therefore, untimely.

Our jurisdiction not having been properly invoked, the hearing officer's decision and order have become final. Section 410.169; Rule 142.16(f).

Elaine M. Chaney
Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Alan C. Ernst
Appeals Judge