

APPEAL NO. 991065

This appeal arises under the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On October 1, 1998, a contested case hearing (CCH) was held. With regard to the issues before her, the hearing officer determined (1) that appellant (claimant) had not sustained a compensable injury; (2) that respondent (carrier) had timely contested compensability; (3) that the employer had not tendered a bona fide offer of employment to claimant; (4) that claimant did not have disability; and (5) that since claimant did not have a compensable injury, the issues of whether the first certification of maximum medical improvement (MMI) and impairment rating (IR) had become final pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)) and the MMI date and IR "are moot."

Claimant appeals, contending that he had sustained an injury and that he had disability, arguing that notice to the carrier or employer was not an issue, that carrier had not timely disputed his injury and that "no issues are moot." Claimant offers information, for the first time on appeal, why he was not present at the CCH and that his attorney "washed his hands" of this case. Claimant contends that his civil rights have been violated and requests that we reverse the hearing officer's decision and render a decision in his favor. Carrier responds, giving the factual background of the case and urges that claimant's appeal is not timely.

DECISION

The appeal in this case was not timely filed and the decision and order of the hearing officer are final. See Sections 410.169 and 410.202.

The decision of the hearing officer was forwarded to the parties by cover letter dated October 13, 1998, and distributed October 14, 1998. The decision was sent to the claimant's last known address at the time, address, City, and to claimant's attorney. Claimant's letter was not returned unclaimed. Although claimant, in his appeal, states that he received the hearing officer's decision on May 14, 1999, claimant does not state the circumstances for the late receipt of the decision then or explain why neither the mailing to him nor to his attorney was received or otherwise returned unclaimed. Consequently, we apply the provisions of Rule 102.5(h) which provides:

- (h) For purposes of determining the date of receipt for those notices and other written communications which require action by a date specific after receipt, the commission shall deem the received date to be five days after the date mailed.

In that the hearing officer's decision was distributed on October 14, 1998, the deemed receipt date would be Monday, October 19, 1998. Section 410.202 provides that an appeal shall be filed with the Appeals Panel "not later than the 15th day after the date on which the decision of the hearing officer is received" If the deemed receipt date is

October 19, 1998, 15 days from that date would be Tuesday, November 3, 1998, which would be the statutory date by which an appeal must be filed. Claimant's appeal was postmarked May 15, 1999, and was received on May 17, 1999. In that the appeal was filed beyond the statutory 15 days accorded in Section 410.202 (being after November 3, 1998), claimant's appeal is untimely.

We do note that claimant filed a change of address with the Texas Workers' Compensation Commission on April 20, 1999, giving an address of (address 1). Claimant, in his appeal, states that he was not released from incarceration until May 7, 1999, and did not receive a copy of the hearing officer's decision until that day. Claimant does not provide any information why he had not received the hearing officer's decision earlier or why it had not been returned unclaimed. Carrier's response advises that claimant's attorney filed a Motion to Withdraw as Attorney of Record for claimant on or about March 23, 1999. (Claimant makes reference that his attorney had "washed his hands" of the case.)

Although the hearing officer obviously knew claimant was incarcerated at the October 1, 1998, CCH, in evidence, as Hearing Officer Exhibit Nos. 3 and 4, is an Order on Request for Continuance signed August 10, 1998 (granting the continuance) and an Order on Request for Claimant to Appear by Telephone signed August 14, 1998 (granting the request) which were sent to claimant at his address and to claimant's attorney. In the allied papers, not in evidence, there is some indication of correspondence with claimant at his prison address but there is also correspondence to a "Mrs. S" (apparently claimant's mother or wife) at the address mentioning claimant's temporary incarceration. Consequently, it is reasonable to conclude, from the evidence in the record, that although claimant was incarcerated, he continued to receive correspondence at the (address 2) address which was the last address supplied by claimant or his representative. See Rule 102.5(a). Claimant's appeal in May 1999 was hence untimely.

Section 410.169 states the decision of the hearing officer is final in the absence of a timely appeal. Determining that the appeal was not timely filed, as set forth above, we have no jurisdiction to review the hearing officer's decision.

Accordingly, the hearing officer's decision and order have become final.

Thomas A. Knapp
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Tommy W. Lueders
Appeals Judge