

APPEAL NO. 991216

Following a contested case hearing held in San Antonio, Texas, on April 30, 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 determining that, based on the report of the designated doctor which was entitled to presumptive weight, the appellant's (claimant) impairment rating (IR) is seven percent. Claimant has requested review in what amounts to a challenge to the sufficiency of the evidence to support the decision. The respondent (self-insured) urged, in response, the sufficiency of the evidence.

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 Section 410.169.

Records of the Texas Workers' Compensation Commission (Commission) reflect that the hearing officer's decision was distributed to the parties on May 12, 1999, under cover letter dated May 12, 1999. Claimant's appeal states that he received the decision on May 21, 1999. 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. 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. See, e.g., Texas Workers' Compensation Commission Appeal No. 982248, decided November 5, 1998. The Commission's letter was addressed to claimant at the address he listed on his request for review and he is therefore deemed to have received the hearing officer's decision and order on May 17, 1999, a Monday.

Section 410.202(a) provides that "[t]o appeal the decision of a hearing officer, a party shall file a written request 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). Rule 143.3(c) provides that a request for review 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 received by the Commission not later than the 20th day after such receipt. Since claimant is deemed to have received the decision on May 17, 1999, a Monday, his deadline to appeal was 15 days later, namely, June 1, 1999, a Tuesday. Claimant's appeal was mailed on June 4, 1999, and was received by the Commission on June 8, 1999. Accordingly, the appeal is determined to be untimely and the jurisdiction of the Appeals Panel has not been properly invoked.

We observe that the hearing officer determined that claimant's IR was seven percent based on the report of the designated doctor. Section 408.125(e) provides that the report

of the designated doctor is entitled to presumptive weight and that the Commission shall base the IR on that report unless it is contrary to the great weight of the other medical evidence. The Appeals Panel has frequently referred to the unique status held by the designated doctor in the Texas workers' compensation process and has held that a mere difference in the professional judgement of doctors will not generally constitute the great weight of the other medical evidence against the designated doctor's report.

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:

Tommy W. Lueders
Appeals Judge

Dorian E. Ramirez
Appeals Judge