

APPEAL NO. 991269

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 May 5, 1999. The issues at the CCH were whether the appellant (claimant) sustained a compensable injury on _____, and whether he sustained disability. The hearing officer determined that the claimant sustained an injury in the course and scope of his employment on _____, and that, as a result, the claimant sustained disability from September 28 through October 5, 1998. Claimant requests that the hearing officer's decision that he had disability until October 5, 1998, be reversed and that a decision be rendered that he has ongoing disability. Respondent (carrier) requests affirmance of the hearing officer's decision on the disability issue. There is no appeal of the hearing officer's decision that claimant sustained a compensable injury on _____.

DECISION

Determining that claimant's request for appeal was not timely filed with the Texas Workers' Compensation Commission (Commission) and that the jurisdiction of the Appeals Panel has not been properly invoked, the decision of the hearing officer has become final pursuant to Section 410.169.

Records of the Commission show that the decision of the hearing officer was distributed to the claimant on May 19, 1999, under a cover letter dated May 19, 1999. The claimant's appeal states that he received the hearing officer's decision on May 21, 1999. Pursuant to Section 410.202, an appeal must be filed within 15 days of receipt of the hearing officer's decision. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(c) (Rule 143.3(c)) provides that an appeal is presumed to have been 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 receipt of the hearing officer's decision. Both portions of Rule 143.3(c) must be complied with in order for an appeal to be timely. Texas Workers' Compensation Commission Appeal No. 94065, decided March 1, 1994; Texas Workers' Compensation Commission Appeal No. 94111, decided March 10, 1994; Texas Workers' Compensation Commission Appeal No. 941225, decided October 24, 1994.

The 15th day after May 21, 1999, was Saturday, June 5, 1999. Thus, the filing period was extended to Monday, June 7, 1999, under Rule 102.3(a)(3). Claimant's appeal is dated June 1, 1999, and the envelope in which it was mailed to the Commission contains a postage meter mark of June 1, 1999 (there does not appear to be any United States Postal Service postmark). The appeal is stamped as received by the Commission on June 15, 1999. The 20th day after May 21, 1999, was Thursday, June 10, 1999. Since the claimant's appeal was not received by the Commission not later than June 10, 1999, which was the 20th day after receipt of the decision, it was not timely filed. Section 410.169 provides that a decision of a hearing officer regarding benefits is final in the absence of a timely appeal by a party.

The hearing officer's decision and order have become final under Section 410.169.

Robert W. Potts
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Elaine M. Chaney
Appeals Judge