

APPEAL NO. 991416

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 21, 1999. The issues at the CCH were whether the appellant (claimant) sustained a compensable injury on _____, and whether he had disability. The hearing officer determined that the claimant sustained a compensable injury on _____, but that he did not have disability as a result thereof. The claimant purports to appeal by sending a brochure entitled Review of Claims Disputes by the Commission's [Texas Workers' Compensation Commission] Appeals Panel and writing on the front page of the decision "I would like to appeal the case, bad understanding [sic] of the Hearing." While this would not appear to be sufficient to meet even the basic requirements of an appeal (Section 410.202; Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3 (Rule 143.3)), the writing was not filed timely. No response has been filed by the respondent (carrier).

DECISION

A timely appeal not having been filed, the decision and order of the hearing officer have become final pursuant to Section 410.169.

Records of the Commission show that the Decision and Order of the hearing officer was mailed to the parties on June 2, 1999. Allowing five days mail time pursuant to Rule 102.5(h), the claimant is deemed to have received that Decision and Order no later than June 7, 1999. According to Section 410.202, to be timely an appeal must be filed not later than the 15th day after receipt of the Decision and Order. That date would be June 22, 1999. The envelope in which the "appeal" was sent to the Commission is post marked July 3, 1999, and it was received by the Commission on July 6, 1999. Thus, the appeal was not timely filed and the Decision and Order of the hearing officer became final under Section 410.169. See Texas Workers' Compensation Commission Appeal No. 92080, decided April 14, 1992.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCURRING OPINION:

I concur in the result reached by Chief Judge Sanders because the appeal forwarded to the Appeals Panel by the claimant was untimely filed; therefore, the hearing officer's decision and order have become final. I write separately to state my disagreement with the observation that the claimant's appeal "would not appear to be sufficient to meet even the basic requirements of an appeal" If the claimant's appeal had been timely

filed, I believe it is adequate to raise a sufficiency challenge to the disability issue, the only issue on which the claimant lost at the hearing. In Texas Workers' Compensation Commission Appeal No. 971637, decided September 26, 1997, the majority noted that the Appeals Panel has "broadly" read the requirements of Section 410.202(c), "particularly in cases involving an unrepresented claimant where it is relatively evident what issues the claimant is appealing." A dissent was filed, which would have required more specificity in the appeal. In Texas Workers' Compensation Commission Appeal No. 971670, decided October 9, 1997, the Appeals Panel determined that a claimant's appeal was adequate "for the reasons set forth in [Appeal No. 971637, *supra*,]" and noted that it would "review this case on a sufficiency of the evidence basis." In a separate concurring opinion, Chief Judge Sanders wrote "[a]lthough I find persuasive the dissent in Appeal No. 971637, *supra*, regarding adequacy of the appeal, I recognize that precedent of the Appeals Panel on this issue has generally put it to rest. I therefore concur." See *also* Texas Workers' Compensation Commission Appeal No. 970931, decided August 13, 1997 (Unpublished), and the cases cited therein, for a discussion of the adequacy of an appeal that was written of the brochure provided to the claimant by the Commission. Under the guidance of those cases, if the claimant's appeal had been timely filed in this case, I would have treated it as a sufficiency challenge to hearing officer's disability determination.

Elaine M. Chaney
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge