

APPEAL NO. 991495

This appeal is brought pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on June 2, 1999. She (hearing officer) determined that the respondent (claimant) sustained bilateral carpal tunnel syndrome in the course and scope of his employment "on" _____ (should have been with a date of injury of _____); that he timely reported the claimed injury to the employer on that day; that the claimant is not barred from pursuing Texas workers' compensation benefits since he did not make an informed election to receive group health insurance benefits instead of workers' compensation benefits; and that he sustained a compensable injury. The appellant (carrier) requested review, summarized the evidence favorable to its position, urged that the determinations of the hearing officer are so against the great weight and preponderance of the evidence as to be clearly wrong and unjust, and requested that the Appeals Panel reverse the decision of the hearing officer and render a decision in its favor. The claimant responded, urged that the evidence is sufficient to support the determinations of the hearing officer, and requested that her decision be affirmed.

DECISION

The request for review was not timely filed, the jurisdiction of the Appeals Panel was not properly invoked, and the decision and order of the hearing officer have become final under the provisions of 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 decision of the hearing officer was distributed to the parties on June 22, 1999, with a cover letter dated that day. Commission records also indicate that the carrier, through its (City) representative, acknowledged receipt of the decision on June 23, 1999. In the carrier's appeal, the attorney representing the carrier states that it received the decision of the hearing officer on June 28, 1999. We note that Rule 156.1 states that notice from the Commission to a carrier's (City) representative is notice to the carrier. Also, receipt by the party, not receipt by the attorney representing the party, controls. Texas Workers' Compensation Commission Appeal No. 941695, decided January 27, 1995. Since the decision was received on June 23, 1999, the deemed receipt date in Rule 102.5(h) does not apply. Appeal No. 941695; Texas Workers' Compensation Commission Appeal No. 952144, decided January 22, 1996. Pursuant to Section 410.202 and Rule 143.3(c), a request for review is timely if it is mailed on or before the 15th day after the date of receipt of the hearing officer's decision. In this instance, the 15th day after the date of receipt was July 8, 1999. Rule 143.3(c) also provides that a request for review is presumed to be timely filed if it is timely mailed and received not later than the 20th day after the date of receipt of the hearing officer's decision. The 20th day after June 23, 1999, is July 13, 1999. The carrier's request for review is dated July 8, 1999. The request for review was received by the Commission on July 15, 1999, in an envelope with a postmark dated July 9, 1999. The request for review was not timely mailed, timely received, or timely filed. Under the

provisions of Section 410.169 and Rule 142.16(f), a decision of a hearing officer regarding benefits is final in the absence of a timely appeal.

The jurisdiction of the Appeals Panel was not properly invoked, and the decision and order of the hearing officer have become final. Section 410.169 and Rule 142.16(f).

Tommy W. Lueders
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Judy L. Stephens
Appeals Judge