

APPEAL NO. 991519

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 11, 1999. He (hearing officer) determined, among other things, that the appellant (claimant) did not sustain a compensable injury in the form of an occupational disease. The claimant appealed that issue and the Appeals Panel reversed and remanded because the hearing officer appeared to have improperly imposed on the claimant the burden of proving her case through expert medical evidence. Texas Workers' Compensation Commission Appeal No. 990539, decided April 14, 1999. On April 15, 1999, the hearing officer issued a Decision and Order on Remand, again determining that the claimant did not sustain a compensable injury in the form of an occupational disease. The claimant appeals the decision on remand, contending that it is not factually and legally supported by the evidence. The respondent (carrier) replies that the decision on remand is correct, is supported by the evidence, and should be affirmed.

DECISION

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

Records of the Texas Workers' Compensation Commission (Commission) show that the decision of the hearing officer on remand was distributed to the claimant on April 21, 1999. Pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(h) (Rule 102.5(h)), the claimant is deemed to have received the decision on remand five days later, on Monday, April 26, 1999. Under Section 410.202, an appeal, to be timely, must be filed within 15 days of the date the decision of the hearing officer is received. Under Rule 143.3(c), an appeal is presumed timely if it is mailed not later than the 15th day after receipt of the decision and received by the Commission not later than 20 days after receipt of the decision. Thus, the last day on which the claimant could timely mail her appeal was Tuesday, May 11, 1999. The claimant's appeal is dated July 12, 1999, and the postmark date on the envelope which contains it is July 14, 1999. The claimant's appeal was received by the Commission on July 19, 1999.

The claimant's appeal was untimely, the jurisdiction of the Appeals Panel was not properly invoked, and the decision and order of the hearing officer on remand have become final under Section 410.169.

Alan C. Ernst
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Thomas A. Knapp
Appeals Judge