

## APPEAL NO. 991565

On June 23, 1999, a contested case hearing (CCH) was held. The CCH was held under the provisions of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). The issue at the CCH was whether employer tendered a bona fide offer of employment to appellant (claimant) entitling respondent (carrier) to adjust post injury weekly earnings and, if so, for what period. Claimant requests that the hearing officer's decision that employer made a bona fide offer of employment to claimant on or about \_\_\_\_\_, and that carrier is entitled to adjust post injury weekly earnings pursuant to the offer of employment between May 11, 1998, and October 31, 1998, be reversed and that a decision be rendered in his favor. Carrier requests affirmance.

### 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 under Section 410.169.

Section 410.202(a) provides that "[t]o appeal the decision of a hearing officer, a party shall file a written request for appeal 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." Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(c) (Rule 143.3(c)) provides that a request for appeal shall be presumed to be timely filed if it is: (1) mailed on or before the 15th day after the date of receipt of the hearing officer's decision; and (2) received by the Commission not later than the 20th day after the date of 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.

Records of the Commission reflect that the hearing officer's decision was distributed to claimant on June 29, 1999. Claimant states in the request for appeal that he received the hearing officer's decision on July 1, 1999. The 15th day after July 1, 1999, was Friday, July 16, 1999. Claimant's request for appeal is dated July 15, 1999, and the envelope in which it was mailed to the Commission contains a postage meter mark of July 15, 1999. (There does not appear to be a United States Postal Service postmark on the envelope.) The 20th day after July 1, 1999, was Wednesday, July 21, 1999. Claimant's request for appeal is stamped as received by the Commission on July 23, 1999. Since claimant's request for appeal was not received by the Commission not later than July 21, 1999, the 20th day after claimant's receipt of the hearing officer's 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:

---

Philip F. O'Neill  
Appeals Judge

---

Gary L. Kilgore  
Appeals Judge