

APPEAL NO. 991604

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 25, 1999. The issues at the CCH were injury and disability. The hearing officer determined that the appellant (claimant) sustained a compensable injury to his left knee on _____, and has not had disability. Although represented by an attorney at the CCH, the claimant appeals, *pro se*, alleging bias on the part of the hearing officer, stating that he has never been released to return to full duty, and urging that he is in financial difficulty because of the hearing officer's not having awarded him temporary income benefits. The claimant requests an expedited hearing. The claimant's appeal is dated July 15, 1999, and is addressed to:

Texas Workers' Compensation Commission
State Office of Administrative Hearings
P.O. Box 13025
Austin, Texas 78711-3025

rather than to the Appeals Clerk of the Texas Workers' Compensation Commission (Commission) at Post Office Box 17848, Austin, Texas 78760-7848, as directed in the cover letter sent with the hearing officer's decision. A facsimile copy of the claimant's appeal was forwarded to the Commission by the respondent (carrier) and is stamped as received by the Commission on July 28, 1999. The file contains no copy of the claimant's appeal from the State Office of Administrative Hearings. The carrier responds that the claimant's appeal was sent to the wrong place and is untimely, that the hearing officer's decision is supported by the evidence, and that the decision 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 Commission show that the decision of the hearing officer was distributed to the claimant on June 23, 1999, with a cover letter of the same date. 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 five days later, on Monday, June 28, 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 date on which the claimant could timely mail his appeal was Tuesday, July 13, 1999. The claimant's appeal is dated July 15, 1999, and was received by the Commission on July 28, 1999. The appeal is thus untimely.

It is noted that rather than sending his appeal to the Commission's Appeals Clerk, as directed on the cover letter which was sent to the claimant with the hearing officer's decision, the claimant sent his appeal to the State Office of Administrative Hearings (SOAH), a separate state agency. The address to which the claimant's appeal was sent is the mailing address of SOAH. TEXAS STATE DIRECTORY 156 (42nd Ed. 1999). While hearings regarding the Commission's medical dispute resolution process and other matters other than benefit disputes are held before SOAH, Rule 148.1 *et seq.*, hearings involving the benefit dispute resolution process are held by the Commission, Rule 140.1 *et seq.*, and appeals of those Commission hearings regarding benefit disputes are to the Appeals Panel. Section 410.202; Rule 143.3. In addition to being untimely, the claimant's appeal was directed to the wrong agency.

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

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Alan C. Ernst
Appeals Judge