

APPEAL NO. 991697

Following a contested case hearing held on April 23, 1999, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer, resolved the disputed issue by determining that the appellant's (claimant) alleged mood disorder and depression are not a result of the compensable thoracic and lumbar spine injury he sustained on _____. Though acknowledging that "the time has expired for notice of appeal," claimant nonetheless asks to be allowed to appeal, asserting that he has requested his attorney to resign and that he also wants to contest his impairment rating. The file does not contain a response from the respondent (carrier).

DECISION

Determining that the request for review was not timely filed and that the jurisdiction of the Appeals Panel has not been properly invoked, the decision of the hearing officer has become final pursuant to the provisions of Section 410.169.

Records of the Texas Workers' Compensation Commission (Commission) show that the hearing officer's decision was distributed to the parties on May 13, 1999, under cover letter dated May 13, 1999. Claimant does not state the date he received the decision. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(h) (Rule 102.5(h)) provides that the Commission shall deem the received date of its written communications to be five days from the date mailed. Accordingly, claimant is deemed to have received the decision on May 18, 1999, a Tuesday.

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." See *also* Rule 143.3(a). Rule 143.3(c) provides that a request for review shall be presumed to be timely filed if it is mailed on or before the 15th day after the date of the receipt of the hearing officer's decision and received by the Commission not later than the 20th day after such receipt. Since claimant is deemed to have received the decision on May 18, 1999, his deadline to appeal was 15 days later, that is, June 2, 1999, a Wednesday. Claimant's request for review is dated August 6, 1999; it bears a postmark with that date; and it was received by the Commission on August 9, 1999. Accordingly, the request for review is determined to be untimely and the jurisdiction of the Appeals Panel has not been properly invoked.

Because claimant did not timely file his request for review of the hearing officer's decision, the decision and order have become final pursuant to Section 410.169.

Philip F. O'Neill
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Dorian E. Ramirez
Appeals Judge