

APPEAL NO. 991975

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 July 29, 1999. The issues at the CCH were injury, extent of injury, and disability. The hearing officer determined that the appellant (claimant) did sustain a compensable injury on _____; that the injury does not extend to include an injury to his right hand and left knee; and that the claimant did not have disability resulting from the injury. The claimant appeals the extent-of-injury and disability determinations, argues that the great weight of evidence is to the contrary, and asks that the Appeals Panel reverse the hearing officer's decision and render a decision that the claimant's injury extends to his right hand and knee and that he has suffered resulting disability from _____, to the present. The respondent (carrier) responds that the hearing officer's decision is supported by sufficient evidence and should be affirmed.

DECISION

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

Pursuant to Section 410.202 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(c) (Rule 143.3(c)), an appeal, to be timely filed, must be filed or mailed not later than the 15th day after the date of receipt of the hearing officer's decision and received by the Texas Workers' Compensation Commission (Commission) not later than the 20th day after the date of receipt of the hearing officer's decision. Texas Workers' Compensation Commission Appeal No. 94065, decided March 1, 1994; Texas Workers' Compensation Commission Appeal No. 941225, decided October 24, 1994.

Records of the Commission show that the hearing officer's decision was mailed to the claimant on August 4, 1999, with a cover letter of the same date. The claimant's appeal does not state when the claimant received the hearing officer's decision. Under Rule 102.5(h), the claimant is deemed to have received the decision five days after it was mailed or, in this case, on Monday, August 9, 1999. Under Rule 143.3(c), the last day the claimant's appeal could be timely mailed was Tuesday, August 24, 1999, and the last day it could be timely received by the Commission was Monday, August 30, 1999 (the 20th day having fallen on a Sunday). The certificate of service reflects that the appeal was mailed to the Commission and the attorney for the carrier on August 20, 1999. The carrier's response states that the carrier received the claimant's appeal on August 24, 1999. The carrier's response was received by the Commission on September 8, 1999. There is no evidence that the Commission ever received the copy of the appeal mailed to it. Notes in the appeal file indicate that on September 8, 1999, the Commission called the office of the attorney for the claimant and asked for a fax copy of the appeal, which had not yet been received. The attorney's office was called again on September 9, 1999, on which date the

appeal was finally faxed to the Commission. The claimant's appeal is stamped as received by the Commission's Chief Clerk of Proceedings on September 9, 1999. Whenever the claimant's appeal may have been mailed to the Commission, it was not received until the faxed copy was received on September 9, 1999, well beyond the deadline of August 30, 1999, set by Rule 143.3(c)(2).

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 have become final under Section 410.169.

Alan C. Ernst
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Tommy W. Lueders
Appeals Judge