

APPEAL NO. 992011

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 30, 1999. The hearing officer determined that the claimant did not sustain a compensable injury on _____, and did not have disability. The claimant appeals, disagreeing with a number of the statements in the hearing officer's decision and his resulting conclusions, requesting an opportunity to present new evidence not available at the time of the CCH, and objecting to certain evidentiary rulings of the hearing officer. The carrier responds that the claimant's appeal is untimely and that the determinations of the hearing officer are correct 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.

Records of the Texas Workers' Compensation Commission (Commission) show that the decision of the hearing officer was distributed to the claimant on August 4, 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, August 9, 1999. The claimant states in her appeal that she received the hearing officer's decision on August 10, 1999. Under Section 410.202, an appeal, to be timely, must be filed not later than the 15th day after receipt of the decision. Rule 143.3(c) provides that an appeal is presumed to have been timely filed if it is mailed not later than the 15th day after receipt of the hearing officer's decision and received by the Commission not later than the 20th day after receipt of the decision. Thus, the last date on which the claimant could timely mail her appeal, 15 days after the deemed date of receipt, was Tuesday, August 24, 1999, and the last day the appeal could be timely received by the Commission was Monday, August 30, 1999 (the 20th day having fallen on a Sunday). 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.

The Dispute Resolution Information System (DRIS) shows that the claimant contacted the Commission's _____ field office on September 14, 1999, asking about the status of her appeal and stating she mailed it around August 23, 1999. A note in the appeal file indicates that the next day, September 15, 1999, the attorney for the carrier was contacted about faxing the Commission a copy of the claimant's appeal. A copy faxed by the carrier's attorney was received by the Commission on September 15, 1999, and is stamped as received by the carrier's attorney on August 27, 1999. Another copy of the claimant's appeal, mailed by the claimant on September 17, 1999, was received by the Commission on September 20, 1999. The appeal file contains no evidence that a copy of

the claimant's appeal was received by the Commission earlier than September 15, 1999. The claimant's appeal, while reciting service on the Commission, does not state the date of that service. The claimant's appeal having been faxed to and mailed to the Commission later than the 15-day deadline and received by the Commission later than the 20-day deadline, the claimant's appeal is untimely.

The claimant's appeal being untimely, the decision of the hearing officer has become final. Section 410.169.

Alan C. Ernst
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Philip F. O'Neill
Appeals Judge