

APPEAL NO. 992016

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 August 17, 1999. The issues at the CCH were:

1. Did the Carrier [respondent] dispute the compensability of the neck injury on or before the 60th day after the receipt of notice?
2. Does the Claimant's [appellant] compensable injury of _____ extend to and include an injury to Claimant's cervical spine?
3. Did the Claimant have disability resulting from the _____ injury, and if so, for what period(s)?
4. What is the Claimant's average weekly wage [AWW]?

The hearing officer determined that the carrier timely disputed the compensability of the neck injury, that the claimant's compensable injury of _____, does not extend to or include an injury to the claimant's cervical spine, that the claimant did not have disability resulting from the _____, injury, and that the claimant's AWW is \$526.92. The claimant appeals, contesting Finding of Fact No. 4 concerning the injury's not aggravating a preexisting neck injury and Finding of Fact No. 11 dealing with AWW (although his discussion of that objection deals with reporting of the neck injury). The carrier responds that there is sufficient evidence to support the determinations of the hearing officer.

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 24, 1999, under a cover letter of the same date. The claimant's appeal states that he received the hearing officer's decision on August 26, 1999. Although Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE §102.5(h)(Rule 102.5(h)) provides for a deemed date of receipt five days after the date of mailing, a signed acknowledgment of an earlier date of receipt prevails over the deemed date of receipt. Texas Workers' Compensation Commission Appeal No. 950972, decided August 7, 1995. Pursuant to Section 410.202, an appeal must be filed within 15 days of receipt of the hearing officer's 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 the date of receipt of the hearing officer's decision and received by the Commission not later than the 20th day after receipt of the hearing officer's decision. The claimant received

the hearing officer's decision on August 26, 1999, so the last day on which he could timely file an appeal was on Friday, September 10, 1999. The claimant's appeal recites service on the carrier and the Commission on September 13, 1999, and the United States Postal Service sticker on the envelope in which it was mailed shows postage paid September 13, 1999. The claimant's appeal is therefore untimely.

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.

Robert W. Potts
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Joe Sebesta
Appeals Judge